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In The

Supreme Court of the United States

October Term, 1992

IOWA COAL MINING COMPANY, INC.;
STAR COAL MINING COMPANY, INC.;
and JIM HUYSER,

Petitioners,

v.

THE BOARD OF SUPERVISORS OF MONROE COUNTY,
IOWA; and MONROE COUNTY, IOWA,

Respondents,

IDF ACQUISITION CORP.; and
FIRST STATE INSURANCE COMPANY,

Intervenors-Respondents.

Petition For Writ Of Certiorari
To The Supreme Court Of Iowa

PETITION FOR WRIT OF CERTIORARI

S. P. DeVolder
(Counsel of Record)
R. Jeffrey Lewis
Joseph G. Van Winkle
Gamble & Davis
A Professional Corporation
2600 Ruan Center
Des Moines, Iowa 50309-2577
(515) 243-6251

James Q. Blomgren
Pothoven, Blomgren &
Stravers
1201 High Avenue, West
Oskaloosa, Iowa 52577
(515) 673-4438

Attorneys for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED FOR REVIEW

I. Whether the zoning ordinance's dramatic effect on the economic value of Iowa Coal's property rights accomplished a taking which requires payment of "just compensation" under the fifth and fourteenth amendments?

II. Whether a regulatory taking under the fifth and fourteenth amendments arises where the zoning ordinance deprives property owner of that essential bundle of property rights necessary to derive profit from the property and only leaves property owner with use rights that are economically valueless?

III. Whether the Iowa Supreme Court decided the regulatory takings claim under the fifth and fourteenth amendments in a way that conflicts with applicable decisions of the United States Supreme Court and the Federal Circuit Court of Appeals?

A. Whether the state court decision conflicts with the Supreme Court's *Lucas* and *Keystone* decisions?

B. Whether the state court decision conflicts with the Federal Circuit's *Whitney Benefits* decision?

LIST OF ALL PARTIES TO THE PROCEEDINGS

The identity of all parties to these proceedings is stated in the case caption. Star Coal Mining Company, Inc. is a wholly owned subsidiary of Iowa Coal Mining Company, Inc. These companies do not own in whole or in part any other subsidiary companies nor do they have any other parent companies. Jim Huyser is the sole shareholder of Iowa Coal Mining Company, Inc.

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There are three relevant opinions entered by the Iowa state courts. The first two are unpublished opinions by the Iowa district court in and for Monroe County. The case in district court was bifurcated into liability and damages trials. The liability ruling entered by district court on December 22, 1989, appears at pages 69a-91a of the appendix. The damages ruling entered on June 18, 1991, appears at pages 20a-68a of the appendix. The decision of the Iowa Supreme Court dated January 20, 1993 is published as *Iowa Coal Mining Co., Inc. v. Monroe County, Iowa*, 494 N.W.2d 664 (Iowa 1993), and appears at pages 1a-17a of the appendix.

GROUNDS ON WHICH JURISDICTION OF THE COURT IS INVOKED

The decision of the Iowa Supreme Court was rendered on January 20, 1993, and is final. Petitioners' petition for rehearing was denied by that court on February 18, 1993. (App. 18a-19a.) This Court has jurisdiction to review the judgment by writ of certiorari under 28 USC § 1257(a).

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED IN THE CASE

The fifth amendment "takings clause" and the fourteenth amendment "incorporation clause," excerpted in pertinent part below, are implicated in this case:

> "nor shall private property be taken for public use, without just compensation"

Constitution of the United States, Amendment 5 ("Takings Clause");

> "nor shall any State deprive any person of life, liberty, or property without due process of law . . . "

Constitution of the United States, Amendment 14 ("Incorporation Clause").

The regulatory zoning ordinance at issue in this case, Monroe County, Iowa, ordinance no. 6, is lengthy. It appears at pages 92a-195a of the appendix.

STATEMENT OF THE CASE

A. Stages Of Proceedings Where The Federal Questions Were Raised.

In each division of its three count petition filed with the Iowa district court on May 5, 1988, petitioners alleged the "enactment of the proposed ordinance deprives [petitioners] of their property without making any provisions for compensation for the taking of said property in violation of . . . the United States Constitution." (App. 198a, 200a, 202a.) In its liability ruling of December 22, 1989, the Iowa district court ruled that "petitioners are entitled to proceed on the bifurcated issue of damages . . . based on the illegal and unconstitutional acts taken by [respondents] in this matter." (App. 90a.) The Iowa Supreme Court, while finding district court ultimately awarded

damages based on a state statutory violation by respondents, specifically reached and decided petitioners' regulatory takings claim under the fifth and fourteenth amendments after reversing district court on the state statutory award. The federal issues have been preserved.[1]

B. Statement Of Material Facts.

Petitioners are Iowa Coal Mining Company, Inc., Star Coal Mining Company, Inc. and Jim Huyser (collectively, "Iowa Coal"). Iowa Coal owns leasehold interests in, among other properties, two tracts of real estate located in Monroe County, Iowa: a 120-acre site known as Star 6 and a 340-acre site known as Star 14. Iowa Coal held leasehold rights to strip mine coal at these sites and to operate the sites as landfills. Its plans were disrupted on May 10, 1988, when respondents Monroe County, Iowa

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[1] As further noted in the decision of the Iowa Supreme Court, the state high court did not reach the takings claim on a tract of property leased by petitioners and known as the Star 6 site. The state court ruled the takings claim on that site was premature. (App. 16a-17a.) Because of this ruling, the takings claim for the Star 6 site is not before this Court. *See Williamson County Regional Planning Com'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186, 105 S.Ct. 3108, 3116, 87 L.Ed.2d 126, 139 (1985) ("a claim that the application of government regulations effects a taking of property is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue").

The Iowa Supreme Court did reach the takings claim on the larger 340-acre tract of property leased by petitioners and known as the Star 14 site. (App. 12a-16a.) Accordingly, the federal takings claim as it relates to the Star 14 site is properly before this Court. *See id.*

and the Board of Supervisors of Monroe County, Iowa (collectively, "County") passed the initial county-wide zoning ordinance (known as ordinance no. 6) that prohibited landfilling on the Star 14 site and permitted strip coal mining there as a conditional use only. (App. 127a-128a.)

Iowa Coal was organized in 1949 by Art Huyser, who is Jim Huyser's father and remained active in the family business until his death in 1984. The company was originally established to conduct strip coal mining operations in southeastern Iowa. In 1978, Iowa Coal had begun strip mining operations in Monroe County. On August 18, 1978, Iowa Coal acquired leasehold rights to strip mine for coal on the Star 6 site. From May 30 to December 8, 1986, these same rights were acquired to strip mine for coal on the Star 14 site.

By 1986, Iowa Coal had become the second largest private employer in Monroe County, employing over 100 workers. Until this time, Iowa Coal's capital-intensive business was financed largely through profit derived from operations as opposed to borrowing. For example, in the 1980s, Iowa Coal constructed an innovative coal wash plant near Lovilia, Iowa, and financed the construction with approximately $2,500,000.00 of its own funds. In 1985, Iowa Coal's financial statements showed a net income of $351,253.00, sales of $11,484,892.00, retained earnings of $3,588,968.00 and cash or cash equivalents of $1,808,621.00.

By the spring of 1987, Iowa Coal could no longer rely on coal mining to remain profitable. The unit costs incurred in mining the coal from its Monroe County sites had become approximately equal to or less than the unit

selling price of the coal. Quite simply, strip coal mining alone could no longer be conducted profitably and Iowa Coal was losing money on its strip coal mine properties. (App. 24a.) Iowa Coal expected this trend not only to continue, but to worsen – and it did. Utilizing its forty years of expertise in moving large volumes of earth, meeting stringent mining safety and environmental standards and running a capital-intensive business, Iowa Coal determined it could use its existing coal properties, in particular the Stars 6 and 14 sites, as landfills. Iowa Coal had acquired leasehold rights to landfill 10.3 acres of the Star 6 site in early 1984. It acquired leasehold rights to landfill on the Star 14 site on August 14, 1987. Landfilling on these sites was economically essential to Iowa Coal, for landfilling was the only property use owned by the company that would result in a return on its property investment in Star 14. There was no governmental regulatory ordinance in place that prevented this use at the time, nor was any such ordinance in the planning stage.

The landfills planned for these sites were contemplated to be "state of the art." The sites were designed for combined strip coal mining and landfilling as explained below. The sites would meet or exceed all applicable financial assurance and environmental requirements imposed by Iowa law. Iowa Coal retained Larry Crane and his environmental consulting firm that specializes in landfill design and operation. Mr. Crane was the third engineer in the United States to work in governmental regulations at the predecessor to the federal EPA, and from 1974-82 was head of the Iowa agency that regulates landfills, the Iowa Department of Natural Resources

(DNR). Mr. Crane and his associates found that the geology at the Stars 6 and 14 sites was ideally suited for sanitary landfilling.

The Iowa DNR agreed. It had issued a landfilling permit for the Star 6 site to Iowa Coal in 1984. In January 1988, Iowa Coal submitted its landfilling permit to DNR for the Star 14 site, and DNR issued the permit on May 13, 1988. Thus, Iowa Coal had all the necessary property rights in place and the permit requirements to operate a landfill in combination with its coal mining business at the Monroe County, Iowa, sites. Iowa Coal expended over $600,000.00 as of May 10, 1988 in acquiring the lease rights to landfill, preparing the sites for combined coal mining and landfilling, acquiring the necessary equipment and technical expertise to operate, and receiving the required state permits. (App. 37a-38a.)

A combination strip coal mine and landfill operation is conducted differently than coal mining alone. In simple coal mining, a seam is quickly opened in the surface of the land and the coal is extracted until the "stripping ratio" (the ratio of tons of earth dug to tons of coal recovered) becomes too high for a profit to be made. When that point is reached, mining is halted, the seam is filled and the land is reclaimed in accordance with federal and state environmental regulations.

When landfilling is added to a strip coal mining operation, income is generated from two sources. The first is related to the effect on the stripping ratio. A landfill requires large volumes of "air space" in which to deposit the solid wastes. Because of this, strip mining for coal can proceed even when the costs to extract the coal

exceed the sale price of the coal (the stripping ratio) for the process creates another valuable resource: cells in which to deposit solid wastes. A combined coal mine and landfill site must be carefully sequenced in time, so that the cells are not opened so prematurely that the air spaces must be reclaimed by operation of law before there is solid wastes to deposit in them. Because reclamation destroys the air pockets needed for landfilling, it is not economical to first strip mine the coal and later utilize the property as a landfill after reclamation of the mining operation. Also, strip mining when combined with landfilling is done in a deep "straight" cut manner, for this increases the volume of air space and properly prepares the air pockets for the deposit of wastes. In coal mining alone, a shallow "circular" cut method is used that renders the property unsuitable for subsequent use as a landfill.

The second source of revenue is generated from "tipping fees" received by the landfill operator. Tipping fees are the costs per ton of wastes that landfill operators charge waste depositors for the landfilling service. Extensive evidence was presented at the state trial court level to establish that 1,000 tons of waste a day at $9.40 a ton tipping fee would be received at the Star 14 site for its projected life as a landfill. These numbers are very conservative – the evidence in fact showed that average tipping fees at Iowa landfills had *tripled* from the time the $9.40 fee was quoted to prospective Star 14 waste depositors and the time of trial. District court in the damages opinion made extensive findings on the value of Iowa

Coal's property interest taken, and conservatively assessed this value at $15,367,498.00.[2]

As of 1988, Iowa Coal had made the following expenditures to develop the Star 14 landfill site: (1) over $300,000.00 in development costs for Star 14 in physically preparing that site for combined coal mining and landfilling; (2) $67,000.00 in advanced royalties to the landfilling lessors; and (3) hundreds of thousands of dollars in consulting fees, engineering fees, landfilling permit fees and the like in preparing the Star 14 site for landfilling operations. (App. 37a-38a.)

By May of 1988, Iowa Coal's landfilling plans were in place and the company was ready to operate the Stars 6 and 14 sites as a combined coal mining and landfilling operation. Iowa Coal had the personnel, the financial and equipment resources and oral approval from the Iowa DNR of its permit application for landfilling. In the opinions of Iowa Coal's owner, accountant, consulting geologist, banker and, ultimately, the trial court as the finder of fact, Iowa Coal had sufficient capacity and resources to open the Star 14 site as a landfill in 1988, and to be in a positive cash flow position within the first six months of operation. A detailed, step-by-step, cash flow analysis

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[2] Of the total amount awarded for the taking, $10,319,526.00 was awarded to Iowa Coal and Star Coal Mining Companies for the taking of their leasehold rights to the Stars 6 and 14 sites, and $5,047,972.00 was awarded to Jim Huyser individually based on a royalty payments agreement he had with the companies as consideration for his assignment of the leasehold rights. State trial court found these amounts represented both the market value of the sites and Iowa Coal's lost economic opportunity. (App. 68a.)

that presented how this would be accomplished was prepared by Iowa Coal, and ultimately adopted by the trial court in its rulings.

Prior to 1988, County had never before adopted or even promulgated in draft form any zoning regulations for Monroe County, Iowa. When County was informed of Iowa Coal's acquisition of leasehold rights to landfill at the Star 14 site, and of Iowa Coal's extensive and costly activities in preparing its property for combined coal mining and landfilling, including preparing and filing its DNR permit applications, County took action solely designed to "stop the landfill." (App. 31a.) County's actions initially involved: opposition to the construction of a mining road to the Star 14 site that County had earlier supported and approved; coordination by County, through its attorney, of a "vicious attack" against operation of the Star 14 landfill at a meeting conducted by Iowa Coal with officials from other Iowa counties to receive their municipal solid waste disposal business; and attempted disruption by County of a subsequent meeting coordinated by Iowa Coal with potential users of the landfill. County's actions ultimately culminated in the hiring, on October 27, 1987, of the Area XV Regional Planning Commission to draft the initial zoning ordinance for Monroe County. A county board member was then quoted in the press as stating that zoning "was the only way to stop the landfill." (App. 31a.) The trial court, in a specific fact finding, ruled "the actions taken by [County] [in adopting the zoning ordinance] were directed toward the specific purpose of preventing the establishment of the Star 14 landfill site." (App. 31a.)

When an initial county-wide zoning ordinance is created, it typically takes six months to complete the background research behind the ordinance, and another three months to complete the drafting process. Ordinance no. 6 was completed in less than one-half that time, and promulgated in its final form on March 2, 1988, in time for the first meeting of the Monroe County zoning commission. At that meeting, County made its *single* contribution to the terms of the ordinance: it amended the ordinance as drafted by the Area XV commission to preclude landfilling as a conditional use in an A-2 (agricultural) zone. As originally drafted by the commission, coal mining and landfilling were listed as "conditional uses in an A-2 zone." The commission's draft materials further noted that landfills were often located in areas that were planned first to be used for strip coal mining. Stars 6 and 14 were zoned A-2. Trial court made a finding of fact that County's actions in the zoning ordinance drafting and adoption process were taken solely to stop the Star 14 site from operating as a landfill. (App. 31a-32a.) On May 10, 1988, the ordinance was given its final reading and passed. County perfunctorily denied Iowa Coal's subsequent application to rezone its property to permit landfilling.

As a result of the zoning ordinance, Iowa Coal could not operate the Star 14 site in the manner it had intended. Star 14 could not economically be utilized solely as a strip coal mining operation. District court made specific fact findings that coal mining without landfilling on the Star 14 site neither could be done profitably nor feasibly as that would destroy its use as a landfill. (App. 32a-33a.) Iowa Coal's coal mining interest in the Star 14 site was

valueless without its landfilling interest in the site. Essential to Iowa Coal's continued survival as a profitable business, and to profitably utilize its property rights in the Star 14 site, was landfilling on that site. County's zoning ordinance squarely prohibited this use, and as a consequence bankrupted the company. Specifically, by the time of the damages phase of the trial, Iowa Coal's current liabilities exceeded current assets by $2,406,422.00, and retained earnings had decreased to a negative $1,836,122.00. (App. 53a.)

ARGUMENT

I. THE ZONING ORDINANCE'S DRAMATIC EFFECT ON THE ECONOMIC VALUE OF IOWA COAL'S PROPERTY RIGHTS ACCOMPLISHED A TAKING WHICH REQUIRES PAYMENT OF "JUST COMPENSATION" UNDER THE FIFTH AND FOURTEENTH AMENDMENTS.

State trial court made specific findings of fact that landfilling in combination with coal mining is essential to Iowa Coal's use of its property, and that County knew its prohibition would have "severe adverse economic consequences" on Iowa Coal. (App. 32a.) Trial court further found that coal mining alone at the Star 14 site was not an economical use of the property and would not result in profit for Iowa Coal. (App. 32a-33a; 52a-54a.) That is, without landfilling, Iowa Coal's property rights were valueless and its business bankrupt. (App. 52a-54a.) These findings establish a "categorical" regulatory taking under the standard set forth by this Court in *Lucas v. South*

Carolina Coastal Council, 550 U.S. ___, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992).

The Iowa Supreme Court erroneously reasoned the zoning ordinance did not effect a *Lucas* style regulatory taking for two reasons: (1) Iowa Coal can still coal mine the property; and (2) Iowa Coal merely lost the "most beneficial use" of its property – combined coal mining and landfilling – not the entire use for the ordinance permits coal mining as a conditional use on the Star 14 site. *Iowa Coal Mining Co., Inc. v. Monroe County*, 494 N.W.2d 664 (Iowa 1993) [hereafter *Iowa Coal*] (App. 12a-16a). The Iowa Supreme Court misapplied controlling federal regulatory takings law, and further ignored trial court's specific findings that the zoning ordinance rendered Iowa Coal's property rights valueless. This Court should grant the writ to correct the decision of the Iowa Supreme Court.

The Iowa Supreme Court quoted the following sentence of the *Lucas* opinion to reverse the just compensation awarded Iowa Coal by the trial court: "when the owner has been called upon to sacrifice *all* economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking." *Lucas v. South Carolina Coastal Council, supra*, 550 U.S. at ___, 112 S.Ct. at 2895, 120 L.Ed.2d at 815 (emphasis in original). But then the court ignored the sentence and considered only whether Star 14 could be put to some remaining commercial use after County's adoption of the zoning ordinance. The court did not stop the analysis when it agreed the coal mining use was not profitable and rendered the Star 14 site economically idle. The court instead opined no *Lucas* taking occurred because it found

Star 14 was rendered economically idle because of "market economics." (App. 11a.)

This phraseology is a shibboleth. Of course, whether a commercial use of property is economically viable depends on market costs and prices. Use of a tract of property to manufacture horse-drawn carriages is not "market economical" because Henry Ford designed the Model T and perfected the assembly line technique. But what does "market economics" have to do with uses that have been proscribed by governmental regulation? Surely, a government body could not avoid its obligation to pay just compensation if it adopts a zoning ordinance that proscribes all existing and viable commercial uses of certain property except for the manufacture of horse-drawn carriages simply because the property originally had been put to that use 80 years ago.

This analogy is the situation in the present case. The Iowa Supreme Court wholly failed to properly focus the takings inquiry on whether all viable economical uses of the Star 14 site were lost *because of the passage of zoning ordinance no. 6.* It was County's zoning ordinance that adversely impacted on "market economics" and rendered Star 14 economically idle. The Iowa Supreme Court engaged in pure question-begging. The state court avoided the established fact of the zoning ordinance's dramatic and severe impact on the "market value" of Iowa Coal's property rights when it analyzed the "market value" of those rights as if Iowa Coal had never acquired leasehold rights to landfill at the Star 14 site in the first place. The problem with this analysis is that Iowa Coal *did* acquire landfilling rights at Star 14. It was the public zoning ordinance, not private "market economics," that

took that right and rendered valueless Iowa Coal's economic interest in Star 14. The Iowa Supreme Court should not be allowed to cavalierly discard the fifth amendment and dodge the constitutional inquiry set forth in *Lucas* through the expediency of a counter-factual assumption. Under the Iowa Supreme Court's analysis, there can never be a regulatory taking so long as the effected property can be put to some prior commercial use after adoption of a zoning ordinance, even if that use cannot be economically justified. The United States Supreme Court rejected this position in *Lucas*.

Lucas involved a takings claim by property owner who had acquired beachfront property with the intent to construct two residential homes there. Before construction was commenced, the state of South Carolina passed a statute that made it impossible for property owner to acquire building permits to construct the homes. Trial court in that case found the statute rendered the property essentially "valueless."

In holding that there was a taking, the *Lucas* Court noted there are two "categorical" classes of takings that do not require a case (i.e. fact) specific inquiry: (1) those where the government action results in a physical "invasion" (i.e. occupation) of the property; and (2) those types of "regulatory takings" which destroy all economically beneficial use of the land. *Lucas, supra*, 550 U.S. at ___, 112 S.Ct. at 2893-94, 120 L.Ed.2d at 812-13. In the latter type of categorical taking, the key inquiry is whether the government regulation has left the property owner with any truly economically viable use of his property rights. If so, there is no categorical taking because property owner does not bear the full burden of the regulatory action that

purportedly is taken to benefit the public at large. However, where the effect of the regulation is to render the property economically idle because a meaningful profit cannot be generated through subjecting the property to any remaining lawful use, then there is a categorical taking that requires payment of just compensation. *Id.*, 550 U.S. at ___, 112 S.Ct. at 2894-95, 120 L.Ed.2d at 815. The property owner involved in *Lucas* sustained such a taking because the state trial court found the South Carolina statute rendered his property "valueless," that is, unsuitable for any reasonable alternative economic development. The *Lucas* court held that:

> In the case of land, however, we think the notion pressed by the Council that title is somehow held subject to the "implied limitation" that the State may subsequently eliminate all economically valuable uses is inconsistent with the historical compact recorded in the Takings Clause that has become part of our constitutional culture.

Id., 550 U.S. at ___, 112 S.Ct. at 2900, 120 L.Ed.2d at 820.

The state trial court in the Iowa Coal case made the same critical fact finding that was made by the trial court in the *Lucas* case. That is, County's zoning ordinance had a "dramatic effect" on Iowa Coal's property rights, and that without combining landfilling with coal mining at the Star 14 site the company would not remain economically viable. (App. 32a-33a; 52a-54a.) At the time ordinance no. 6 was passed, Iowa Coal had leasehold rights to landfill the Star 14 site, had expended hundreds of thousands of dollars to prepare the site for combination coal mining and landfilling, had a state permit to landfill the

Star 6 site, had submitted a landfill permit application for the Star 14 site, and received the permit only three days after the ordinance was passed.

To avoid these facts and the trial court's specific findings of economic harm, the Iowa Supreme Court made a second attempt to distinguish the facts of this case from those in *Lucas*. The court opined "that the leases for Star 14 and Star 6 were acquired by Iowa Coal in anticipation of strip mining, not solid waste disposal." *Iowa Coal, supra*, 494 N.W.2d at ___ (App. 14a). In truth, Star 6 had been used as a landfill since 1984 and Iowa Coal acquired its landfilling lease rights to Star 14 over a full year before County adopted the zoning ordinance and before County had ever contemplated zoning. As found by the trial court, County initiated the ordinance process only after Iowa Coal acquired its leasehold rights and "solely" to "stop the landfill." (App. 31a.) The Iowa Supreme Court's attempt to distinguish *Lucas* on the basis of original rights acquisition must fail.[3]

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[3] The Iowa Supreme Court next considered whether a "noncategorical" taking occurred under the three-part standard stated by the Court in *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631, 648 (1978), and *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 485, 495, 107 S.Ct. 1232, 1241-42, 94 L.Ed.2d 472, 488 (1987). This is a "reasonableness" test that makes inquiry into: (1) the economic impact of the regulation on claimant's property rights; (2) the regulation's interference with investment-backed expectations; and (3) the character of the governmental action.

For the reasons discussed in the text, the state trial court made binding fact findings, fully supported by the evidence, that establish that the ordinance's effect on Iowa Coal's economic interests and investment-backed expectations was total.

The Iowa Supreme Court improperly distinguished the *Lucas* case to find no regulatory taking occurred. To do this, the court ignored the holding of that case and the fact findings of the state trial court. This Court should issue the writ to the Iowa Supreme Court to correct the state court's misapplication of fifth amendment regulatory takings jurisprudence in the state of Iowa.

II. A REGULATORY TAKING WHICH REQUIRES PAYMENT OF "JUST COMPENSATION" UNDER THE FIFTH AND FOURTEENTH AMENDMENTS HAS ARISEN IN THIS CASE BECAUSE THE ZONING ORDINANCE HAS DEPRIVED IOWA COAL OF THAT KEY BUNDLE OF PROPERTY RIGHTS NECESSARY TO DERIVE PROFIT FROM THE PROPERTY.

The Iowa Supreme Court reasoned that the fifth amendment does not require payment of just compensation where property owner retains some commercial use of his property, even where the use is not economically viable. Specifically, the Iowa Supreme Court held there was not a regulatory taking in this case because Iowa Coal, as a conditional use, could strip mine for coal on the Star 14 site, even though strip mining was not an economically viable use of the property and would

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As for the third factor, the "character" of the governmental regulation, this too supports a taking. The Iowa governmental body with regulatory power over landfilling, the Iowa Department of Natural Resources, issued landfilling permits for both the Star 6 and the Star 14 sites. The Iowa government entity with specific authority over landfills approved the Star 14 site as a landfill.

destroy that property for its viable use – combined coal mining and landfilling. The state court's analysis is flawed. The court ignored the established fact that Iowa Coal's key economic bundle of property rights – combined coal mining with landfilling – was taken by County's zoning ordinance. This was the only economically viable use of the property held by Iowa Coal. Under controlling fifth amendment takings cases of this Court, a taking that requires the payment of just compensation resulted.

The United States Supreme Court addressed the issue in *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987). There, an association of coal mine operators in western Pennsylvania claimed their property rights were taken by a state coal subsidence act that required a fixed percentage of coal located near certain public structures be left unmined. The regulation effected less than two percent of the total coal rights owned by the association. *Id.*, 480 U.S. at 498-99, 107 S.Ct. at 1248-49, 94 L.Ed.2d at 496-497. The association relied on a prior United States Supreme Court decision, *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922), to urge that their property rights had been taken. The *Mahon* court found an earlier Pennsylvania coal subsidence act had effected a taking of coal owner's property. The *Keystone* court distinguished the earlier decision on the basis that there had been no finding by the state trial court in *Keystone*, unlike in *Mahon*, "that the Subsidence Act makes it impossible for [coal association] to profitably engage in their business, or that there has been an undue interference with their investment-backed expectations" because over 98

percent of the coal could still be mined. *Keystone, supra,* 480 U.S. at 485, 107 S.Ct. at 1242, 94 L.Ed.2d at 488. The *Keystone* court gave great weight to the fact that "[coal association] have not claimed, at this stage, that the Act makes it commercially impossible for them to continue mining their bituminous coal in western Pennsylvania." *Id.*, 480 U.S. at 495-96, 107 S.Ct. at 1247, 94 L.Ed.2d at 495.

Precisely this claim has been made and established by Iowa Coal. County's zoning ordinance proscribed landfilling at the Star 14 site. Without landfilling, Iowa Coal's contemplated method to strip mine the site, one designed to prepare it for landfilling, became uneconomical. Likewise, the site did not have value for strip mining use alone. Unlike the statute in *Keystone*, the ordinance in this case did render the entire use of Iowa Coal's property rights unprofitable. County's zoning ordinance directly took that key segment of Iowa Coal's property rights essential to profitable use of the property. The ordinance accordingly effected a regulatory taking.

This conclusion is further supported by Chief Justice Rehnquist's dissenting opinion, joined by three Justices, in *Keystone*. The dissent squarely delineated the issue that is presented by Iowa Coal's petition for writ of certiorari: "we have recognized that regulations – unlike physical invasions – do not typically extinguish the 'full bundle' of rights in a particular piece of property." *Keystone, supra,* 480 U.S. at 516, 107 S.Ct. at 1258, 94 L.Ed.2d at 508 (Rehnquist, J., dissenting). The dissent noted that the three-part *Penn Central* analysis, stated at footnote 3 of this petition, is generally applied when less than the "full bundle" of the economic "sticks" that comprise a claimant's property right is taken. *Id.*, 480 U.S. at 516, 107 S.Ct.

at 1258, 94 L.Ed.2d at 508 (Rehnquist, J., dissenting). The dissent did not apply this test, however, for *Keystone* involved a "categorical" regulatory taking even though less than two percent of the association's total coal reserves were effected. That is because there is only one economic "bundle" of property rights involved in coal mining, the right to mine the coal. *Id.*, 480 U.S. at 517-18, 107 S.Ct. at 1259, 94 L.Ed.2d at 508-09 (Rehnquist, J., dissenting). The state coal subsidence act expropriated that right, for it prohibited coal association from mining that portion of the coal it owned that was subject to the act.

County's zoning ordinance similarly left Iowa Coal with no economically viable stick remaining in its bundle of property rights. The ordinance took Iowa Coal's leasehold rights to landfill and engage in combined coal mining and landfilling at the Star 14 site. The only stick left to Iowa Coal by the ordinance was a conditional right to strip mine for coal alone. But this stick was economically valueless to Iowa Coal, as the state trial court specifically found. (App. 31a-34a; 52a-54a.) This resulted in a categorical regulatory taking under both *Lucas* and *Keystone*.[4]

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[4] In a half-hearted attempt to further distinguish the ordinance involved in this case from those in *Lucas* and *Keystone*, the Iowa Supreme Court hinted a categorical regulatory taking might not be present because landfilling can be a "harmful use" and is potentially a nuisance. *Iowa Coal, supra*, 494 N.W.2d at ___ (App. 14a-15a). But this ignores the fact that the Iowa Department of Natural Resources, the government expert in this field, issued a landfilling permit for Star 14. It also ignores the state trial court's findings on the issue.

Interestingly, the *Lucas* Court anticipated this argument when it observed a public body could not properly label a

The Iowa Supreme Court circumvented this result by engaging in the three part *Penn Central* regulatory takings test. But this test was never implicated, given the totality of the regulatory taking by County's zoning ordinance. County specifically was informed that adoption of the ordinance would bankrupt Iowa Coal, because coal mining alone could not be conducted profitably. (App. 32a; 52a.) Despite this knowledge, County adopted its ordinance that left Iowa Coal with (conditionally) that one economically valueless stick in its prior bundle of property rights, coal mining. From a property use standpoint, County's zoning ordinance as adopted is no different in economic substance than had County's ordinance also completely prohibited Iowa Coal from strip mining the Star 14 site. Had County's zoning ordinance done this, then (presumably) even the Iowa Supreme Court would have had no difficulty in finding that a categorical regulatory taking of Iowa Coal's property occurred. The entire bundle of Iowa Coal's property rights would have been taken by that ordinance. The single distinguishing feature between these cases is the ordinance as adopted left one

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landfill as a nuisance for takings purposes where there is no evidence that the landfill will adversely effect adjoining properties:

> On this analysis [nuisance exception to compensation for regulatory taking], the owner of a lake bed, for example, would not be entitled to compensation when he is denied the requisite permit to engage in a landfilling operation *that would have the effect of flooding others' land.*

Lucas, supra, 550 U.S. at ___, 112 S.Ct. at 2900, 120 L.Ed.2d at 821 (emphasis added).

valueless stick in Iowa Coal's bundle of rights (conditionally) untouched, whereas the hypothetical ordinance took that valueless stick along with the economically valuable ones taken by the actual ordinance.

This is the very distinction in regulatory takings jurisprudence that properly has been rejected by this Court in *Lucas* and *Keystone* (both the majority and dissenting opinions). The Iowa Supreme Court erred in accepting the distinction as part of federal regulatory takings law. If the state supreme court's opinion is allowed to stand, then the fifth amendment takings clause is emasculated in the state of Iowa. An Iowa government body, to avoid its constitutional obligation to pay just compensation for categorical regulatory takings, merely would need to adopt a regulation which proscribes all economically viable uses of an owner's property rights, but leaves the owner with one or more potentially remaining uses that are economically valueless. This result cannot be endorsed under the fifth amendment. This Court should grant Iowa Coal's petition and issue the writ to the Iowa Supreme Court.

III. THE IOWA SUPREME COURT DECIDED THE REGULATORY TAKINGS CLAIM UNDER THE FIFTH AND FOURTEENTH AMENDMENTS IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THE UNITED STATES SUPREME COURT AND THE FEDERAL CIRCUIT COURT OF APPEALS.

A. The State Court Decision Conflicts With The Supreme Court's *Lucas* And *Keystone* Decisions.

For the reasons stated at divisions I and II of this petition, the opinion of the Iowa Supreme Court dramatically

departs from this Court's controlling fifth amendment regulatory takings cases. As a result of the state court's decision, owners of property rights in Iowa are not protected by the fifth amendment when they are stripped of all economically valuable uses of their property by government regulation. This is now the result in Iowa even when the regulation, such as County's zoning ordinance, is adopted with the public body's knowledge that the property owner will be bankrupted and suffer the full burden of the regulation supposedly adopted to benefit the public as a whole. This result is inconsistent with the protection accorded by the fifth amendment and this Court's rulings in *Lucas* and *Keystone*. Accordingly, under Sup. Ct. Rule 10.1(c), there exist "special and important reasons" for this Court to exercise its discretion and grant this petition.

B. The State Court Decision Conflicts With The Federal Circuit's *Whitney Benefits* Decision.

In *Whitney Benefits, Inc. v. United States*, 926 F.2d 1169 (Fed. Cir.1991), *cert. denied*, ___ U.S. ___, 112 S.Ct. 406, 116 L.Ed.2d 354 (1991), the appeals court affirmed a claims court ruling that awarded a lessee of coal mining rights over $60 million for a regulatory taking by the United States. The regulation at issue was the Surface Mining Control and Reclamation Act. That act "expressly precluded a permit for surface mining an AVF [alluvial valley floor] . . . in terms precisely applicable to, and known to be applicable to, the AVF overlying the Whitney Coal property." *Id.* at 1170. Because of the act, Whitney Benefits could not receive a permit to surface mine the coal

located within the AVF covered by its lease. The government argued a taking did not occur because Whitney Benefits retained other uses for the property, specifically, mining under the AVF surface and farming and ranching on the surface. The *Whitney Benefits* court rejected the government's position and held that a categorical regulatory taking occurred because the act deprived Whitney Benefits of that one economical use, surface mining, for which it had expended funds in acquiring leasehold rights and preparing its property for surface mining. Anticipating this Court's *Lucas* decision, the *Whitney Benefits* court ruled a taking occurred because the act made it "impossible for [Whitney Benefits] to engage in their business profitably," although other (nonprofitable) uses could be made of the property as the government had suggested. *Id.* at 1179, and 1179 n. 9. The *Whitney Benefits* court distinguished its decision from the *Keystone* opinion, where the majority found no taking of the property right to mine coal, on the basis that "evidence of value destruction [was] wanting" in *Keystone*, unlike *Whitney Benefits*. *Id.* at 1176-77.

Like the lessee of coal mining rights in *Whitney Benefits*, Iowa Coal expended thousands of man hours and hundreds of thousands of dollars in acquiring leasehold rights and preparing the Star 14 site as a combined coal mine and landfill operation. This lawful and economically valuable use was taken by County through its adoption of the zoning ordinance. Like the regulation involved in *Whitney Benefits*, County's zoning ordinance rendered it "impossible for [Iowa Coal] to engage in [its] business profitably." Unlike *Keystone*, evidence of the dramatic and serious economic effect on Iowa Coal's business was not

wanting. State trial court made detailed findings that the ordinance rendered the Star 14 site economically valueless and put Iowa Coal out-of-business.

The Iowa Supreme Court's opinion is in conflict with the *Whitney Benefits* decision. Accordingly, under Sup. Ct. Rule 10.1(b), there exist "special and important reasons" for this Court to exercise its discretion and grant this petition.

CONCLUSION

The Iowa Supreme Court failed to properly apply recent and controlling fifth amendment precedent of this Court and the Federal Circuit Court of Appeals when it reversed substantial damages awarded to Iowa Coal for the regulatory taking effected by County's adoption of ordinance no. 6. The state supreme court's opinion absolves County from suffering the constitutional penitence of paying just compensation for rendering Star 14 economically idle and Iowa Coal's property rights valueless. It further grants Iowa governmental bodies immunity from the fifth amendment's requirement that just compensation be paid for the taking of valuable property rights. Because the fifth amendment's core protection of these rights is directly and dramatically implicated, the

United States Supreme Court should grant this petiti
and order full briefing of the important issues raise

Respectfully submitted,

S. P. DeVolder
(Counsel of Record)
R. Jeffrey Lewis
Joseph G. Van Winkle
Gamble & Davis
A Professional Corporation
2600 Ruan Center
Des Moines, Iowa 50309-2577
(515) 243-6251

James Q. Blomgren
Pothoven, Blomgren &
Stravers
1201 High Avenue, West
Oskaloosa, Iowa 52577
(515) 673-4438

Attorneys for Petitioners

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APPENDIX

IN THE SUPREME COURT OF IOWA

No. 339/91-1237

Filed January 20, 1993

IOWA COAL MINING COMPANY, INC.,
STAR COAL MINING COMPANY, INC.,
and JIM HUYSER,

Appellees,

vs.

MONROE COUNTY, IOWA,

Appellant.

Appeal from the Iowa District Court for Monroe County, James P. Rielly, Judge.

County challenges substantial verdict for a coal company in suit over zoning ordinance. REVERSED AND REMANDED WITH DIRECTIONS.

Lee H. Gaudineer of Austin, Gaudineer, Austin, Salmons & Swanson, Des Moines, and Annette J. Scieszinski, Special Assistant County Attorney, Albia, for appellants.

R. Jeffrey Lewis, Joseph G. Van Winkle, and S.P. DeVolder of Gamble & Davis, P.C., Des Moines, for appellees Iowa Coal Mining Company, Inc. and Star Coal Mining Company, Inc.

James Q. Blomgren and Randall C. Stravers of Pothoven, Blomgren & Stravers, Oskaloosa, for appellee Jim Huyser.

Considered by Larson, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ.

NEUMAN, J.

This case concerns a coal company's attempt to increase its profitability by merging its strip mining operation with a solid waste landfill. The company's zeal in pursuing the venture was exceeded only by the county's speed in enacting a zoning ordinance to restrict it. The question is whether the county thereby violated statutory zoning laws or so burdened the coal company with a regulatory taking that it is entitled to just compensation under our state and federal constitutions.

Focusing solely on the statutory claim, the district court invalidated the county's zoning ordinance and entered multimillion dollar judgments for the company and its owner. We now reverse those awards on the county's appeal.

I. Background facts and proceedings. Plaintiff Iowa Coal Company, and its wholly owned subsidiary, plaintiff Star Coal, are corporations having their principal place of business in Monroe County, Iowa. Plaintiff Jim Huyser is president and sole shareholder of both corporations. He also owns the leasehold interests in the mining properties. Those leases have been assigned to Star Coal in exchange for royalties paid to Huyser on the basis of tonnage mined and sold. Throughout this opinion these plaintiffs shall be collectively referred to as "Iowa Coal."

Iowa Coal is engaged in strip mining. This process, in contrast to underground mining, removes the coal closest to the surface, proceeding deeper until the cost of removing the coal (plus the "overburden") exceeds its value. Although the company had enjoyed a decade of sizable profits, by early 1987 the mining operation was only breaking even; that is, the cost of obtaining the coal product for sale was roughly equal to the sales achieved.

To counteract the impact of fluctuating coal prices and to increase its profitability, Iowa Coal embarked on a plan to merge its coal mining with a solid waste disposal operation. Iowa Coal was already engaged in the landfill business, to a limited extent, at one of its mines known as Star 6. Although relatively small (10.3 acres) and never fully developed, Star 6 held a state permit to accept coal by-products, such as fly ash. It also had a permit to accept tires.

Iowa Coal identified one of its other and much larger (350 acres) coal leases, known as Star 14, as a potential landfill site which would complement strip mining, but only if the two operations were synchronized. Traditional strip mining techniques destroy a site's usefulness for landfilling because the mine proceeds in a circular fashion around the coal outcrop, removing all the shallow coal first. To combine strip mining with a landfill, the operator must make straight cuts and remove both the shallow and deep coal to create an air space or "physical cell" where waste may be deposited. The idea is that the additional cost of excavating the deeper coal will be more than offset by fees generated upon the creation of a new

resource: the large cell in which to deposit waste. Additionally, the potential cost of this diversification is minimized by the fact that both processes (mining and landfilling) employ similar earthmoving equipment and expertise.

In January 1988, Iowa Coal sought a landfill permit from the Iowa Department of Natural Resources for Star 14. Although the proposed landfill was designed to meet or exceed existing regulatory rules, swift approval of the permit was desired to avoid compliance with the more stringent requirements of the Iowa Groundwater Act of 1987 to take effect in July 1988. Thus at the time Iowa Coal submitted its application, leachate collection and treatment systems were not required to be planned or in place before the permit could be granted. Nor did the application need to contain a plan for methane gas collection. Financial assurance plans were not yet required, nor were any plans for closure or postclosure maintenance. Iowa Coal's ability to proceed unburdened by these restrictions would not only reduce its expenses but also enhance the landfill's attractiveness to potential users.

Iowa Coal's plans did not proceed unnoticed by Monroe County residents and its board of supervisors. In October 1987, the county hired Alan Heuton, senior planner for the Area XV Regional Planning Commission, to upgrade the county land use map. Heuton's contract expressed the county's expectation that the new map and its accompanying text "when legally adopted in accordance with chapter 358A of the Code of Iowa, shall become the Monroe County Zoning Ordinance." Heuton proceeded to make a physical inspection of Monroe County and its current land use, and studied documents

previously prepared by the Regional Planning Commission. He then drafted a sixty-two page ordinance proposing permitted and conditional uses in each district, and the administration of the zoning scheme. This draft was considered by the newly appointed zoning commission at its first meeting in March 1988.

As initially drafted, the ordinance allowed both landfilling and mining as conditional uses in an A-2 agricultural district. Star 6 and Star 14 are located in an A-2 district. After meeting with Heuton, the zoning commission revised the draft ordinance to permit landfilling as a conditional use on I-2 (heavy industrial) land only. The commission believed that the heavy traffic and equipment associated with a landfill presented environmental, safety, and road maintenance concerns best accommodated by the I-2 classification.

Several public meetings were held at which Huyser and others objected to and commented upon the proposed ordinance. Because the proposed ordinance permitted strip mining as a conditional use in both A-2 and I-2 districts, but confined landfills to I-2, Iowa Coal could continue strip mining but could not combine the operation with a landfill.

Upon vote of the commission on April 21, 1988, it forwarded the proposed ordinance to the board of supervisors for adoption. By May 12, 1988, it had been formally read by the board at three consecutive meetings and enacted into law. We shall refer to it in this opinion as "Ordinance 6."

Meanwhile, the Department of Natural Resources held public hearings on Iowa Coal's landfill permit application. The permit was not approved until May 13, 1988. Iowa Coal subsequently applied for rezoning to accommodate its planned landfill/mining operations at Star 6 and 14. The Monroe County Board of Supervisors denied the request and this suit followed.

Iowa Coal's suit against Monroe County, as amended, sought relief by way of certiorari and declaratory judgment. The petition alleged the illegality of the county's enforcement of Ordinance 6, claimed the ordinance deprived Iowa Coal of the only legitimate use of its property without providing just compensation, and sought damages. The court conducted two trials on the issues raised; the first addressed the county's alleged "liability," and the second covered damages.

Based on the facts outlined above, the district court concluded that the county violated Iowa Code section 358A.5 because it "failed to develop a Comprehensive Plan *prior to* the enactment of a Zoning Ordinance." (Emphasis added.) Without this statutory compliance, the court ruled, the county exceeded its jurisdiction thereby rendering the ordinance void and unenforceable. The court then authorized a second trial on the damages sustained by Iowa Coal as a result of the county's "illegal and unconstitutional" acts.

In its ruling following a lengthy trial on damages, the court rested its award on plaintiff's loss of business opportunity, measured "by proof of the present value of lost profits and lost royalties that Plaintiffs would have received absent the illegal acts of the Defendants." By this

standard, the court calculated Iowa Coal's loss at $10,319,526 and Jim Huyser's loss at $5,047,972, and entered judgment accordingly. This appeal by Monroe County followed.

II. Issues on appeal. The thrust of the county's appeal is, like the district court opinion, directed solely at the alleged statutory invalidity of Monroe County's zoning ordinance. Thus the county claims the court committed legal error when it found a statutory violation, and magnified the mistake by sustaining a private cause of action in damages for its breach. The county also attacks the size and scope of the award on other grounds, including the sufficiency of the evidence to support it and the measure by which it was calculated. Finally the county claims the award cannot stand because it violates the constitutional debt limit imposed on counties.

Iowa Coal responds by urging affirmance on constitutional as well as statutory grounds. We have recognized that a party for whom a favorable judgment has been rendered may attempt to save the judgment by urging any ground asserted in the trial court. *Scott v. City of Sioux City*, 432 N.W.2d 144, 147 (Iowa 1988); *Citizens Against the Lewis & Clark (Mowery) Landfill v. Pottawattamie County Bd. of Adjustment*, 277 N.W.2d 921, 926 (Iowa 1979). Thus the controlling issues as we see them are (1) whether the county violated Iowa Code section 358A.5 and, if not, then (2) whether Ordinance 6, as enacted, amounted to a taking of Iowa Coal's property entitling it to just compensation.

III. Scope of review. This combined certiorari-declaratory judgment action was tried at law in the district court. Thus our review would ordinarily be limited to the correction of errors at law. *Neuzil v. City of Iowa City*, 451 N.W.2d 159, 163 (Iowa 1990). Here we are confronted with both statutory and constitutional claims. On the statutory claim we are bound by the trial court's well supported factual findings, but not its conclusions of law. *Id.* The existence of a constitutional issue requires us to review de novo the evidence bearing on that claim. *Montgomery v. Bremer County Bd. of Supervisors*, 299 N.W.2d 687, 692 (Iowa 1980).

IV. Discussion.

A. Statutory claim. The foundation for the district court's sizable award is its finding that Monroe County did not adopt its zoning ordinance in conformity with Iowa Code section 358A.5. That section, contained in a chapter empowering county boards of supervisors to regulate and restrict land use and structures within the county, provides:

> *The regulations shall be made in accordance with a comprehensive plan* and designed to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion in the street or highway; to secure safety from fire, flood, panic, and other dangers; to protect health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar

> energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. . . .
>
> Such regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such county.

Iowa Code § 358A.5 (emphasis added).

Focusing on the statute's mandate that such regulations proceed only "in accordance with a comprehensive plan," the district court found – as a factual matter – that no planning document existed apart from the county's sixty-two page zoning ordinance. It then concluded – as a matter of law – that without such a planning document, adopted prior to and independent of the zoning ordinance itself, the county was without legal authority to enact a zoning ordinance. It is this legal conclusion, not the court's factual finding, that the county challenges on appeal. We agree that the district court's narrow construction of the statute is not in keeping with the great weight of authority.

This court has not previously ruled whether a county must demonstrate written evidence of a plan as well as a zoning ordinance when it initiates countywide zoning. But in the context of *rezoning*, this court has held that compliance with the comprehensive plan requirement merely means that zoning authorities have given "full consideration to the problem presented, including the

needs of the public, changing conditions, and the similarity of other land in the same area." *Montgomery,* 299 N.W.2d at 695. Noting the flexibility of this standard, the Iowa Court of Appeals recently observed that "nothing in chapter 358A requires a county to reduce a comprehensive plan to written form." *Webb v. Giltner,* 468 N.W.2d 838, 840 (Iowa App. 1991). It then ruled that once a plan is adopted officials are not free to ignore it in favor of some other "comprehensive" plan of their choice. *Id.* The court reasoned that fidelity to "the" comprehensive plan, "whether inherent in the zoning ordinance or a separate written document," reduces the risk of arbitrary decision making, lending stability and predictability to the zoning process. *Id.* at 840-41.

These comments from *Webb* and *Montgomery,* though dicta and not controlling in the case before us, reflect the widely-held views of commentators in the field. Zoning "in accordance with a comprehensive plan" does not require that there be a planning document separate from the zoning ordinance itself. Vestal, *Iowa Land Use and Zoning Law* § 3.01(d) at 67 (1980). To the contrary, a comprehensive plan is traditionally evidenced by a zoning ordinance which is "precise in its terms, gives notice of its restrictions and is geographically complete." 6 P. Rohan, *Zoning and Land Use Controls* § 37.01[1][b] at 37-7 (1991). Thus the planning necessary to implement a comprehensive zoning scheme need not be reduced to writing; it may be found in the ordinance itself. McQuillin, *Municipal Corporations* § 25.78 at 287 (3d ed. 1991); 83 Am. Jur. 2d *Zoning and Planning* § 17 at 48 (1992). The statutory validity of such a "self-contained" zoning ordinance must ultimately be tested, not by the existence of some

freestanding planning document, but by whether the ordinance advances the community's interest rather than that of private owners. *Zoning and Land Use Controls* § 37.02[1] at 37-25.

We deem it significant that apart from the lack of an independent plan, and a generalized criticism of the speed with which Monroe County enacted its zoning ordinance, the district court found no fault with the substance of Ordinance 6. It would unduly lengthen this opinion to detail, item by item, the ways in which the zoning classifications within Ordinance 6's sixty-two pages correspond to the essential considerations listed in section 358A.5. Because the merits of the Ordinance itself are not being challenged, we believe it sufficient to say that it is comprehensive in its scope, uniform in its application to properties having similar qualities and location, and advances community needs ahead of private concerns.

We hold that it was erroneous for the court to invalidate Ordinance 6 on the ground no independent planning document preceded it. Iowa Code section 358A.5, in keeping with similar statutes adopted nationwide, does not mandate such procedure. *Cf. Wolf v. City of Ely*, ___ N.W.2d ___ (Iowa 1992) (reaching same conclusion regarding Iowa Code section 414.3, governing municipal zoning). It is sufficient – particularly when dealing with a predominantly rural area the size and population of Monroe County – that planning merely be evidenced by the ordinance itself. The district court's contrary ruling on this point, and the judgment for damages premised on its conclusions, must be reversed.

B. Regulatory taking claim. Left unaddressed by the district court was Iowa Coal's inverse condemnation claim. The company asserted that the enactment of Ordinance 6, and the county's subsequent refusal to rezone Iowa Coal's property to I-2 in order to permit combined coal mining and waste disposal, denied plaintiffs "the only legitimate use of their property." As a result, Iowa Coal claimed, it was forced to shut down its operation completely, causing substantial and irreparable damage.

In its most recent analysis of a takings claim, the United States Supreme Court equated the impact of confiscatory regulation – that is, "regulation that prohibits *all* economically beneficial use of land" – with the "permanent physical occupation" that typifies the sort of taking that has, without exception, given rise to a right of just compensation. *Lucas v. South Carolina Coastal Council,* 505 U.S. ___, ___, 112 S. Ct. 2886, 2900, 120 L. Ed. 2d 798, 821 (1992) (emphasis added); *see also Fitzgarrald v. City of Iowa City,* ___ N.W.2d ___, ___ (Iowa 1992) (if some physical invasion is demonstrated there is no de minimis rule). When such a complete deprivation occurs, the fact that the regulation advances a substantial state interest, or otherwise protects the general welfare by preventing a harmful use, becomes irrelevant. The regulatory authority can only avoid compensation if it can be shown that the property owner's "bundle of rights" never included the right to use the land in the way the regulation forbids. *Lucas,* 505 U.S. at ___, 112 S. Ct. at 2899, 120 L. Ed. 2d at 820.

Short of a physical invasion by the government, or the "total taking" conceived in *Lucas,* this court has also recognized that regulatory schemes which substantially

deprive a landowner of the use and enjoyment of property may be compensable. *E.g., Fitzgarrald,* ___ N.W.2d at ___; *Easter Lake Estates, Inc. v. Polk County,* 444 N.W.2d 72, 75 (Iowa 1989); *Phelps v. Board of Supervisors,* 211 N.W.2d 274, 276 (Iowa 1973). Finding the point at which this exercise of police power becomes a taking requires a case-by-case examination. *Woodbury County Soil Conservation Dist. v. Ortner,* 279 N.W.2d 276, 278 (Iowa 1979).

This ad hoc approach calls for a test that "is essentially one of reasonableness." *Stone v. City of Wilton,* 331 N.W.2d 398, 404 (Iowa 1983). Three factors generally guide the inquiry: (1) the economic impact of the regulation of the claimant's property; (2) the regulation's interference with investment-backed expectations; and (3) the character of the governmental action. *Penn Cent. Transp. Co. v. New York City,* 438 U.S. 104, 124, 98 S. Ct. 2646, 2659, 57 L. Ed. 2d 631, 648 (1978); *Ortner,* 279 N.W.2d at 278; *see also Keystone Bituminous Coal Ass'n v. DeBenedictis,* 480 U.S. 470, 485, 107 S. Ct. 1232, 1241-42, 94 L. Ed. 2d 472, 488 (1987).

Despite Iowa Coal's claim to the contrary, this is not, like *Lucas,* a "total taking" case. *Lucas* involved the claim of a developer who purchased two lots on a barrier island off the coast of South Carolina specifically for the purpose of building single family dwellings consistent with the zoning then in place. Two years later the state passed a beachfront management act which barred the construction of any permanent habitable structures on the lots, thereby rendering the property valueless to the developer. *Lucas,* 505 U.S. at ___, 112 S. Ct. at 2889, 120 L. Ed. 2d at 807. Remanding the case for further proceedings on whether the proposed development would violate the

state's common law of nuisance, the Court ruled that when "a regulation that declares 'off-limits' all economically productive or beneficial uses of land goes beyond what [state nuisance law] would dictate, compensation must be paid to sustain it." *Id.* at ___, 112 S. Ct. at 2901, 120 L. Ed. 2d at 822.

Here the evidence is quite clear that the leases for Star 14 and Star 6 were acquired by Iowa Coal in anticipation of strip mining, not solid waste disposal. More importantly, the economic viability of mining, at least at Star 14, is only diminished by Ordinance 6's restriction on landfilling, not destroyed by it. The record reveals that Star 14's shallow coal reserves have not yet been mined and are, therefore, not yet burdened by the unfavorable "stripping ratios" that had made Iowa Coal's older sites unprofitable. Iowa Coal insists that to mine Star 14 in the traditional way would destroy the potential for ever developing the site for combined mining-landfill operation, the most economically beneficial use of the land. But deprivation of the most beneficial use of property does not render an otherwise valid exercise of police power a taking. *Stone,* 331 N.W.2d at 404. *See also Goldblatt v. Town of Hempstead,* 369 U.S. 590, 592, 82 S. Ct. 987, 989, 8 L. Ed. 2d 130, 133 (1962); *Penn Central,* 438 U.S. at 131, 98 S. Ct. at 2662, 57 L. Ed. 2d at 652-53.

Nor do we believe the evidence demonstrates entitlement to compensation under the three-factor substantial deprivation test of *Penn Central* and *Ortner.* Taking the factors in reverse order, we note that the nature of the government action involved – zoning to regulate, among other things, the siting of sanitary landfills – is peculiarly within the government's power to regulate the health and

welfare of the community. *See Keystone,* 480 U.S. at 485, 107 S. Ct. at 1242, 94 L. Ed. 2d at 488 (state's action in enforcing subsidence act to preserve structural support for surface estates above coal mines directed at significant treat to common welfare and thus "leans heavily against finding a taking"); *Stone,* 331 N.W.2d at 403 (zoning to control population density rationally furthers public welfare).

As for any claim of interference with Iowa Coal's investment-backed expectations, we have already noted in our rejection of the "total taking" claim that Iowa Coal's initial investment in Star 14 was not for the purpose of developing a solid waste disposal site. Thus the majority of its resources were already invested in expectation of strip mining. In fact, Iowa Coal's own proof suggests that its capital investment in any landfill operation would be minimized because of the similarity in equipment and essential personnel involved in both industries. *See Stone,* 331 N.W.2d at 404 (where no material is placed on site and no construction work begun, plaintiff's efforts and expenditures prior to rezoning not so substantial as to create vested right in particular land use). It also appears that the cost expended in planning and promoting this proposed landfill project paralleled, rather than predated, the county's action, further weakening Iowa Coal's claim.

Finally, we do not believe that the ordinance's projected impact on Iowa Coal's profitability outweighs the county's undisputed right to reasonably regulate land use within the county. Unlike the *Whitney* case, upon which Iowa Coal heavily relies, the regulation at issue here is no

way prevents Iowa Coal from mining as before. In *Whitney,* the enactment of legislation to prohibit surface mining on the alluvial valley floor overlying plaintiff's mines effectively barred plaintiff's access to its coal reserves, thereby entitling it to compensation for a total taking of a specific coal deposit. *Whitney Benefits, Inc. v. United States,* 926 F.2d 1169, 1172 (Fed. Cir.), *cert. denied,* ___ U.S. ___, 112 S. Ct. 406, 116 L. Ed. 2d 354 (1991). Here, Iowa Coal's reserves are still accessible. The profitability of their recovery turns as much, if not more, on market economics than any regulation imposed by the county.

In summary, we conclude that Monroe County has not substantially deprived Iowa Coal of its use and enjoyment of the Star 14 mine. Hence we find no taking upon which to sustain Iowa Coal's claim of compensation.

Iowa Coal's claim for the Star 6 site fails for a different reason. As noted earlier in his opinion, Iowa Coal held a valid state permit to accept certain wastes at Star 6, and was using the mine as a landfill on a limited basis before the enactment of Ordinance 6. The ordinance expressly allows existing nonconforming uses to continue. The record reveals, however, that Iowa Coal never sought to take advantage of this section of the ordinance.

Unless a claimant exhausts available state remedies, a court is without jurisdiction to entertain a claim that the economic viability of the property has been substantially impaired by the zoning ordinance. *Bakken v. City of Council Bluffs,* 470 N.W.2d 34, 37 (Iowa 1991). Iowa Coal's claim as it pertains to Star 6 was not ripe for adjudication.

Accordingly, we reverse and remand this claim for dismissal as premature. *See id.* at 38.

REVERSED AND REMANDED WITH DIRECTIONS.

IN THE SUPREME COURT OF IOWA

No. 91-1237

ORDER

(Filed FEB 18 1993)

IOWA COAL MINING COMPANY, INC.,
STAR COAL MINING COMPANY, INC.,
and JIM HUYSER,

Appellees,

vs.

MONROE COUNTY, IOWA,

Appellant.

After consideration by the court, en banc, appellees' Petition for Rehearing in the above-captioned case is hereby overruled and denied.

Dated this 18th day of February, 1993.

THE SUPREME COURT OF IOWA

/s/ Arthur A. McGiverin
Arthur A. McGiverin
Chief Justice

Copies to:

James Q. Blomgren
1201 High Avenue West
P.O. Box 1066
Oskaloosa, IA 52577

R. Jeffrey Lewis
Joseph G. Van Winkle
S. P. DeVolder
2600 Ruan Center
Des Moines, IA 50309-2577

Lee H. Gaudineer
900 Des Moines Building
Des Moines, IA 50309

Annette J. Scieszinski
13 South Clinton
Albia, IA 52531

John G. Fletcher
1100 Two Ruan Center
Des Moines, IA 50309

Marsha Ternus
801 Grand Avenue
Suite 3700
Des Moines, IA 50309

IN THE IOWA DISTRICT COURT
FOR MONROE COUNTY

IOWA COAL MINING COMPANY, INC., STAR COAL MINING COMPANY, INC., and JIM HUYSER, Plaintiffs, vs. BILLY K. MYERS, RAYMOND VANCE, HELEN SINCLAIR, THE BOARD OF SUPERVISORS OF MONROE COUNTY, IOWA, and MONROE COUNTY, IOWA, Defendants, and IDF ACQUISITION CORP., Intervenor.	)	No. CL 54-0588 CL 1-54 CL 72-1088 CL 1-72 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT ENTRY (Filed June 19, 1991)

Plaintiffs, on May 5, 1988, filed herein their Petition for Writ of Certiorari, Declaratory Relief and Temporary Injunction in case No. CL 54-0588, and on October 25, 1988, Plaintiffs also filed a Petition for Writ of Certiorari and Declaratory Relief in case No. CL 72-1088. These cases were consolidated for trial and, based upon agreement of the parties, the issues of liability and damages were bifurcated for the purposes of trial. The Court filed its Findings of Fact, Conclusions of Law and Decree on

liability issues on December 27, 1989. In its Decree the Court ordered that the Plaintiffs were entitled to proceed on the bifurcated issue of damages.

Upon the issues as tendered by the pleadings and the Court's Findings of Fact, Conclusions of Law and Decree of December 27, 1989, these cases were tried at law to the Court commencing on March 12, 1991, and trial was adjourned on March 22, 1991. Trial recommenced on April 6, 1991, and concluded on April 15, 1991. At that time the Plaintiffs and Defendants requested leave of Court to file proposed Findings of Fact, Conclusions of Law and Decree and Post-Trial Briefs, and the Court set a deadline of May 17, 1991 within which to file such matters. The Court has now received the post-trial filings on behalf of all Plaintiffs and Defendants and the Court considers these matters fully submitted for a ruling.

From the evidence received at trial, the Court makes the following

FINDINGS OF FACT

Star Coal Mining Company, Inc., hereinafter referred to as "Star Coal," and Iowa Coal Mining Company, Inc., hereinafter referred to as "Iowa Coal" are Iowa corporations that have been in operation in Iowa since 1947 and 1978, respectively. Star Coal has mined coal and operated a coal washing plant in Monroe County, and Iowa Coal has functioned as the marketing arm of the original Star Coal. Star Coal is the wholly owned subsidiary of Iowa Coal, and all of the shares of stock in Iowa Coal are owned by Jim Huyser, Plaintiff in this action. Star Coal

and Iowa Coal have operated profitably during the years of their existence through 1987.

In the early 1980's Star Coal was the first coal mining company to open a wash plant in Iowa to wash Iowa coal so it would burn cleaner. The wash plant was constructed in approximately 1980 at a cost of over $2 million. This project was paid for from the cash flow of the operations of the coal mining operation. The essential purpose of the wash plant was to wash certain impurities that existed naturally in the coal. Washing Iowa coal allows it to burn cleaner and more efficiently and made it a more salable product for the consumers of Iowa Coal. Annual sales of the Star Coal operations exceeded $10 million on a regular basis until 1988.

In addition to being the shareholder of Iowa Coal, Jim Huyser has been President of Star Coal and Iowa Coal Corporation for over ten years. The coal mining business was founded by Art Huyser, Jim Huyser's father, who remained active in the business until his death in 1984.

The coal mining entities obtained the properties upon which coal was mined through leases with the landowners. The leases were obtained by Jim Huyser in his own name and then assigned to Star Coal in consideration of a royalty payment to be paid to Jim Huyser. The royalties were paid to him upon the basis of coal tonnage mined and sold from the properties that were leased. Jim Huyser's tax returns (Defendant's Exhibits U and V) reflect that over the years he received substantial royalties for coal mined and sold, which royalties at times exceeded $295,000 per year.

The evidence shows that the market for Iowa coal has traditionally been a cyclical market with prices that varied from year to year. The coal prices received by any entity selling coal varied depending upon the quality of the coal mined and other energy supplies available. Star Coal was actively marketing its coal and was involved with coal customers throughout the State of Iowa during the time that it was in operation. It had bid upon and obtained ten year contracts to supply coal to various coal consumers in the state. In the mid 1980's, Star Coal commenced the Superior Coal operation, which was a completely separate company and which was operated on its own. Superior Coal was an entirely underground mine as opposed to Star Coal which operated only surface mines. Star Coal and Superior Coal operations were interrelated as a result of financing arrangements and the efforts to support Superior Coal financially from internal sources. Superior Coal, however, ran into geological problems in its mining operation and in the maintenance of the underground mine. The particular problem involved geological formations known as a "buried valley" which made mining unsafe and at times made it impossible to actually mine and process coal from the underground mine.

In July of 1987, the Superior Coal mine was closed and its debt to Star Coal was written off. The debt that was written off was that which remained after Superior Coal paid a portion of the debt and transferred a portion of its equipment to Star Coal in satisfaction for that portion of the debt equal to the value of the equipment transferred. The various companies had over the approximately ten year period prior to May 1988 acquired extensive leases and option rights, and had

received 15 surface mining permits and two underground mining permits.

The economics of coal mining in southern Iowa is controlled to a large degree by the amount of "overburden" over the coal seams, the coal sulfur content, available coal supplies, and fluctuating coal prices. Historically, Iowa Coal would mine a permitted site (designated for company and regulatory purposes as Star sites, consecutively numbered) until the amount of overburden or soil and other material over the coal seam made it uneconomical to mine the site further. When the "stripping ratios" became unfavorable, a new site would be mined. After the wash plant was installed by Iowa Coal in 1980, the company was in a position to sell either "washed coal" or "raw coal" depending upon the coal customer's needs. As of the spring of 1988, "raw coal" was sold for about $18 a ton. Subsequent to 1988, the use of "fluidized beds" in coal burning boilers enabled coal customers to utilize coal with a higher sulfur content. Prior to May, 1988, Iowa Coal/Star Coal customers included Iowa Electric Light & Power, Iowa State University, the University of Northern Iowa, and the City of Pella, Iowa.

By 1987, notwithstanding the fact that there had been significant profits in prior years, the mining operation was essentially breaking even. That is, the cost of obtaining the coal product for sale was roughly equal to the sales achieved in the mining of the coal.

At that time, it was apparent to the management of Star Coal that it would be appropriate for them to diversify their operation and become involved in the

landfilling business. Therefore, in the spring of 1987, when Star Coal determined that it could not rely upon fluctuating coal prices to remain profitable, it set out upon a venture that would merge the coal mining operation with a solid waste disposal operation. This was a natural extension of their coal mining work, since many of the activities of the coal mining operation fit well with the activities that would be required to maintain a successful landfill. The equipment that would be needed such as scrapers, front-end loaders, bulldozers, hauling trucks and scales, could be utilized both in the coal mining operation and in the landfill.

In addition, the technology utilized in the mining operation with regard to the geology of sites, the environmental impact of the operation and the general configuration of handling the materials was similar. Prior to May, 1988, Iowa Coal and Star Coal employed about 100 people, and in the fiscal year ending June, 1988, had a payroll of $1,019,477, not including administrative salaries. (Exhibit CC). Key employees included James Huyser (president), LaDonna Fechtling (bookkeeping/accounting), Kenny Rennells (purchasing/equipment/maintenance), Dan Toll (permitting/equipment/mining operations) and Randy Luwe (permitting/geology/marketing). These employees as well as others had experience in marketing and leasing and the companies had established a transportation network. Further, the company had a long and successful history of dealing with the regulatory agencies that regulate coal mining. Coal mining is a highly regulated industry, and the expertise required for obtaining permits and for ongoing dealings with the regulatory agencies would also be required in

the landfill operation and would have been provided by these employees of the Star and Iowa Coal Companies that were already on staff.

Prior to May, 1988, the management of Iowa Coal/ Star Coal had historically demonstrated an ability to operate profitably in the business of producing and selling their coal in Iowa. The earliest financial statements for the companies in evidence is for the fiscal year ending June 30, 1984 (Exhibit Y). At the end of that fiscal year, the company, for accounting purposes, had retained earnings of $3,237,715, reflecting substantial profits in prior years, and cash and cash equivalents of $1,133,167. In fiscal year ending June 30, 1985 (Exhibit Y), the companies had a net income of $351,253, cash and cash equivalents of $1,808,261. [sic] and retained earnings of $3,588,968. Exhibit Y shows that total sales for that year amounted to the sum of $11,484,892. Some fluctuation from sales and income from coal sales is, based upon testimony of an accountant for the companies, to be expected in the coal business. This fluction [sic] can be seen in comparing three years of sales: 1984, $7,429,873; 1985, $11,484,892; 1986, $10,908,456. (Exhibits Y and Z).

Coal mining in the State of Iowa is subject to both state and federal regulatory schemes. The state regulations are promulgated and enforced by the Iowa Department of Agriculture, the Division of Soil Conservation. The federal regulations are administered by the Office of Surface Mining, which has an office in Kansas City. The Des Moines state office also assists in the administration of the federal regulations in addition to their own state regulations. A monthly inspection was required by the regulatory authorities pursuant to their rules. This

included specific analysis of the operating equipment at the site of the mines.

Star Coal had previously obtained a landfilling permit from the State of Iowa. In 1984, the mining operation known as Star 6 received a permit from the State of Iowa as a landfill site. Construction was never finalized at that site, although there was waste deposited there from the Star Coal wash plant. The wash plant generated waste products, including dirt, shale, rock, coal fines and pyrites from the washing process, which wastes were then deposited in Star 6. In addition, at a subsequent time a Special Waste Authorization was obtained from the State of Iowa to allow the depositing of tires into the site at Star 6.

As indicated above, the profitability of mining coal may depend a great deal upon the overburden or dirt above the coal seam that is to be removed before the actual coal can be taken from the ground. Generally, the coal mining operation commences where the coal seams are easily reachable, and, consequently, where the extraction of coal is more profitable. As the coal operations proceed, the coal seams would be deeper into the ground and the amount of overburden that is needed to be removed would be greater. Therefore, the cost of removing the coal is higher near the end of the operation for each productive coal seam. At the time it ceased operations, Star Coal was at the end of the coal seam at Star 10 and Star 11A. Star Coal was then mining in an area in which the cost of production was the highest of those particular coal seams. Since the coal seams at Star 14 were much closer to the surface than those mined in Star 10

and Star 11, the cost of production at Star 14 when mining began would have been relatively low.

As a result of the management decision to diversify operations from coal mining to avoid the cyclical nature of the income for the operations, Star Coal embarked on a course of preparing for a landfill operation. This was a particularly advantageous time to market a landfill operation because of the enactment of the 1987 Ground Water Protection Act by the Iowa Legislature. This legislation as well as similar legislation passed in other states recognized the increasing importance of protecting the environment in dealing with the problem of municipal solid waste. Randy Luwe, a geologist and long-time employee of Star Coal, was very familiar with the permitting process required by the State of Iowa as well as the geological characteristics of the sites that had been permitted for Star Coal. Star Coal at that time had completed and submitted its application for a coal mining permit at the Star 14 site. Because many of the requirements for the permitting process for a coal mine were the same as for a disposal site, it made sense for the company to permit Star 14 as a disposal site as well. Star Coal was able to utilize much of the information that was obtained in the coal permitting process for its efforts to obtain a landfill permit.

In addition to examining the geology of the site, the company began its marketing efforts. Larry Crane had extensive contact with markets that were available and Randy Luwe handled many of the preliminary contacts for the marketing of the landfill site. Luwe was specifically responsible for contacting counties that were seeking alternatives for their own landfills due to the

increased cost of state regulations and the recently enacted groundwater legislation. Preliminary proposals were prepared and forwarded to various municipalities and contacts were made with various utilities that would also dispose of ash. A few of the representatives of the counties as well as private individuals, including a representative of Waste Systems Corporation, visited the landfill site and indicated an interest in disposing of waste in this site. At that time, it was apparent that the Iowa regulatory agencies dealing with environmental controls as well as landfill permitting were publicly attempting to reduce the number of landfill sites in the State of Iowa, and they were encouraging a regional landfill concept. Also in 1987 and early 1988, Waste Systems Corporation, a company with its headquarters at Lake Mills and Albert Lee, Minnesota, was interested in becoming a partner with Star Coal in the operation of the landfill. Waste Systems operated its own landfill and had significant contacts in the waste disposal industry because it hauls a large volume of solid waste. This interest was significant because the haulers are people who control where the waste is deposited, and since Waste Systems was heavily involved in hauling waste, it would be able to use the Star 14 site extensively. In addition, it was going to be necessary as of July 1, 1988, for the Star Coal landfill operation to be managed by a certified landfill operator. David Bergan, an employee of Waste Systems Corporation, testified that he was certified by both the national and state organizations as a landfill operator and would have had the ability to operate the landfill and comply with any statutory requirements that the operator be certified.

As the process continued for the permitting of Star 14, additional information was obtained. Randy Luwe worked with Star Coal until November of 1987 when he left to join Hickok & Associates in Des Moines, Iowa. Hickok & Associates was a consulting firm that dealt with engineering projects and had significant expertise in the regulatory area as well as in the design of landfill operations. After he joined Hickok & Associates, Randy Luwe continued to work almost exclusively on the Star 14 project, and in the spring of 1988 he returned to Star Coal to finish the permitting process and to begin the operation of the landfill at the Star 14 site. While Luwe was at Hickok & Associates, the Star 14 landfill permit application was submitted to the Iowa Department of Natural Resources on January 19, 1988. At the time the permit was submitted, the significant portions of the Ground Water Act of 1987 had not yet taken effect. No comprehensive plan was required, nor were leachate collection and treatment systems required to be planned, and it was not necessary for a leachate collection system to be in place for the landfill to be permitted. It was also not necessary for the application to contain a plan for a methane gas collection system. Financial assurance plans were not required, nor were any plans for closure or post-closure maintenance.

The evidence shows that the plan submitted by Star Coal in its permit application, was a "state of the art" proposal and did contain responses to requirements that were well beyond the regulatory rules at that time. A number of the requirements which were imposed upon Star Coal were at least in part requested specifically of

Dr. Burton Kross, who was a consultant that was employed by Monroe County.

After Monroe County discovered Star Coal had begun its planning for solid waste disposal, the County began its campaign to restrict land use in Monroe County. The County hired Dr. Kross as a consultant to review the permit application and the agencies of Monroe County involved specifically stressed their opposition to the disposal site in Monroe County. In October of 1987, a Petition was signed by various members of the Board of Supervisors, the Solid Waste Advisory Commission of Monroe County, and the County Attorney of Monroe County stating specifically that they were opposed to the Star 14 disposal site (Plaintiff's Exhibit 50).

Also in the fall of 1987, Raymond Vance, who is now deceased, but who was a member of the Board of Supervisors at that time, stated that the adoption of county zoning would stop the landfill that was being proposed. There were also letters sent to customers and regulatory agencies in the State of Iowa opposing this landfill (Plaintiff's 40, 62, 63).

It appears that the actions taken by the Defendants from the time they originally determined that the proposed landfill was to be located in Monroe County were directed toward the specific purpose of preventing the establishment of the Star 14 landfill site. The Defendants became aware early in the process that if the Star landfill operation was not established, it would have a significant economic impact on Star Coal and Iowa Coal. The evidence shows that Jim Huyser in numerous meetings that occurred prior to the passage of Ordinance 6, indicated

this fact to the Defendants. According to Plaintiff's Exhibit 63, being a letter from the Chairman of the Monroe County Board of Supervisors to Mr. Ken Tow of the Mines and Minerals Division of the Iowa Department of Agriculture, the Chairman of the Board stated that James Huyser had said that "without the landfill portion of our business, we will cease operation of the coal stripping business." Notwithstanding this knowledge that denial of a landfill permit would have severe adverse economic consequences so far as the Plaintiffs are concerned, the Board of Supervisors of Monroe County did proceed to pass Ordinance No. 6 which became effective on May 10, 1988.

There were no specific requirements in the statutory or regulatory provisions which required a public meeting with regard to the permitting process of a landfill, nor were there any requirements that the landfill prepare and submit a comprehensive plan or financial information that was required in this case. The comprehensive plan was ultimately prepared in April of 1988 as a result of efforts of Monroe County and became a part of the permit application. It appears the request and requirement for a comprehensive plan was specifically generated by efforts on behalf of the Defendants through the County officials and through its consultant, Burton Kross. This was true even though the statutory requirements did not provide for a comprehensive plan until July 1, 1988.

Ordinance 6 became effective on May 10, 1988, and the sanitary landfill permit was issued to Star Coal on the Star 14 site on May 13, 1988.

The operations of Star Coal and Iowa Coal then ceased near the end of June of 1988 because of the passage of Ordinance 6. Ordinance 6 specifically prohibited landfilling and coal mining in combination on lands in Monroe County, even though the Defendants in this case were fully and completely aware of the plans and the project of Iowa Coal and Star Coal and of the impact of the passage of Ordinance 6.

The companies, being confronted with Ordinance 6 and being unable to operate as a landfill/coal mine, made a reasonable management decision to cease the operations and pursue their administrative and legal remedies. On July 22, 1988, Star Coal made application for the rezoning of its property with the Monroe County Administrator. Star Coal requested at that time that their property be rezoned to allow the property to be utilized for both coal mining and sanitary waste disposal. The Administrator presented the Petition of Star Coal to the Monroe County Zoning Commission, and the Commission recommended to the Board of Supervisors that Star Coal's application for rezoning be disallowed. This application was disallowed on September 26, 1988 by the Monroe County Board of Supervisors.

The evidence shows that the normal progression of the coal mining operation would require initial stripping of those areas where the coal was closest to the surface, thereby maximizing the income and profits from the coal mining operation. This occurs because the cost of stripping the shallowest seams is less than the cost of the deeper seams, and if the mining process continues at the shallowest seams first, then profits are maximized and costs are minimized. However, mining the coal in that

fashion would have destroyed the Star 14 site for the permitted landfilling operating since the permitted landfilling operation required air space, and in order to create air space, not only the shallow coal needed to be mined, but the deep coal as well. In addition, for this site to be utilized for the permitted landfilling operation, the cells needed to be straight cut. If landfilling was not involved, the cuts or mining would have occurred in a circular fashion around the coal outcropping. The idea at Star 14, however, was to recover the shallow coal as well as the deep coal, and when the air space created by recovering coal from the deeper seams became available, it would be refilled with waste material. Since the design called for the waste cells to be deep and straight cut, it was not possible to mine in the regular fashion since to do so would have destroyed the potential of the site for the landfilling operation.

Approximately 100 employees were laid off as a result of the closure of Star Coal and Iowa Coal. This step had to be taken since without the ability to mine coal on Star 14, Star Coal had nowhere to go to mine coal profitably.

At the time Star Coal closed its operation in June of 1988, it had less of $30,000 of bank debt, and it had coal contracts in effect at that time. After the company ceased active coal mining in June, 1988, reclamation was continued as long as economically possible and some 200 acres were reclaimed after that date. By the time of trial, reclamation problems had placed the company's mining permits in jeopardy.

An examination of the financial statements of Star Coal and Iowa Coal, being Defendant's Exhibits AA, BB, CC and DD, show that there has been a significant deterioration in the financial situation of both companies since the passage of Ordinance No. 6. After passage of the Ordinance, Star Coal was unable to operate and could not, in fact, generate any cash flow after they were required to close their operations.

In June of 1989, an offer was made to purchase the company by Moreland Minerals, a Delaware corporation (Defendant's Exhibit JJ). This proposed agreement specifically required the existing problems with the County to be resolved before the agreement could be effective. This clearly indicates that the problems which had been created by the County, including the passage of Ordinance No. 6, and its general efforts to prevent the implementation of the landfill operation, continued to destroy the viability of Star Coal.

In addition to the Moreland Minerals agreement, an offer was made by George Ide and Associates. This offer was in June of 1990 and was a proposal to purchase the stock of Star Coal. This offer, as did the offer from Moreland Minerals, recognized Jim Huyser's right to royalties for coal and landfilling. This agreement was never closed as a result of the inability of George Ide and Associates to obtain appropriate financing for the purchase. It appears that the financing would be impossible to get so long as there is ongoing litigation regarding the viability of the operation.

It further appears that Jim Huyser would not have entered into an agreement with either Moreland Minerals

or George Ide and Associates had it not been for the passage of Ordinance No. 6 and its effects.

Since November of 1990 when the final employees left Star Coal, there has been no operation of the coal mining or landfilling portions of this business. In addition, the reclamation has ceased and there has been no additional maintenance on the equipment since that time.

The project involving Star Coal and Iowa Coal as a coal mining/landfilling company began to take shape in 1986 when the management of the companies first began to believe alternative income sources would be appropriate to smooth the fluctuations in the coal mining income. The concept of combining landfilling with surface coal mining was a reasonable expansion of the business both in terms of operations and economics. As a coal mining company, management and employees already had experience in leasing, drilling, testing, permitting, groundwater and geological surveys, reclamation and sediment control. Excavation and construction equipment in which the company had over the years already invested over $6 million (Exhibit AA) was already available and experienced equipment operators were employed by the company. Key employees such as Dan Toll and Kenny Reynolds had years of experience in excavation, controlling excavation costs and construction equipment maintenance. The companies had been for many years been involved in planning depth, yardage, and cost of excavation on a year-round basis and in controlling potentially harmful waste and water. Both landfilling and coal mining required excavation, reclamation and construction equipment. Coal mining and landfilling require the same type of equipment such as scrapers, front end loaders,

bulldozers, trucks and scales. Existing and potential coal customers could provide coal ash and residue for coal trucks to haul back to the project site. This would provide not only a convenient customer base but also transportation savings on backhauls. Coal mining at Star 10 and Star 11A was becoming uneconomical due to increasing stripping ratios, and coal operations were just breaking even in terms of revenues and mining expenses. A new site was needed, and the future of coal mining in Iowa was uncertain. The expansion into landfilling was in a very practical sense not a new business from the viewpoint of Iowa Coal, but represented an expansion in which the company could utilize existing resources to increase profit. With landfilling the removal of overburden, formerly only a coal mining cost, would create valuable "air space" for solid waste disposal (one ton of coal removed would create 10 tons of air space; at $9.40 a ton, this would produce revenue of $112 instead of only $18 for the coal alone). Since the decision was made to expand into the landfilling business, the companies devoted substantial resources and money to make the concept a reality. Larry Crane, former head of the Iowa Department of Environmental Quality, a leading authority on sanitary landfills in the midwest and the founder of the Iowa office of James M. Montgomery (then Eugene Hickok and Associates), an international engineering firm, was employed as a consultant to design the site, estimate costs and fees, to survey the market, to implement the complicated permitting process for both mining and landfilling. Randy Luwe, the Iowa Coal geologist, and later with James M. Montgomery Consulting Firm, became involved in all aspects of the expansion including

preliminary marketing, permitting, site selection, excavation design and costing. Over 15,000 feet of exploration wells and test drillings were done by the company at an internal cost of $20 a foot drilled for a total of over $300,000 in drilling costs. Consultants were paid $186,824 for engineering and permitting services. (Exhibit 43). Advance royalties were paid in the amount of $67,000 on coal leases which were amended to allow landfilling. (Exhibits 7 and 8). Substantial overhead and man hours, including $72,418 in salary expense attributed to the site for Randy Luwe and Dan Toll, and other company resources were devoted to the project as well. The permitting process involved extensive hydrological studies, site engineering plans, and drilling tests results which are shown in detail in the permit application for Star 14 (Exhibit 7) and a sample of the engineering site drawings in evidence (Exhibit 6 (a)-(f)). DNR permit application for Star 14 (Exhibit 7), which was submitted on January 19, 1988, contains voluminous information submitted to the agency, which was later supplemented by further data.

Randy Luwe, who was employed by Star Coal from June, 1983 to November, 1987, and from March, 1988 to August, 1988, who is now a consulting hydrogeologist for numerous client operated sanitary landfills, provided the Court with detailed testimony concerning the geologic and engineering aspects of the Star 14 coal mining/landfilling site. Due to the presence of "fireclay" below the coal seam to be mined, a natural impermeable zone would exist under the landfilled material and the walls of the cells would be clay-lined. The DNR in the permitting process accepted the fireclay in lieu of an artificial liner because its natural properties are more impermeable than

DNR requirements. The presence of fireclay and the absence of underground aquifers in the areas to be used make the site uniquely suited for solid waste landfilling both in terms of environmental safety and operation of the site. Larry Crane testified that this was a state of the art landfill and the best site for a landfill he had encountered. Star 14 was designed by the consulting engineers so that it would be mined and landfilled in specific stages and new cells would be excavated and the coal removed in sequence to allow for backfilling of deposited waste in compliance with engineering plans. (See Exhibit 37). While the Star 14 site had favorable stripping ratios for the Carruthers and Beviers coal seams to be mined, the operations plan differed completely from traditional surface coal mining which involves mining outcrops of coal or around a hill to reduce overburden removal. Star 14 after it was designed, could not be coal mined in the traditional manner without destroying the usefulness of the site for landfilling and the usefulness of the engineering design for the creation of air space in cells for waste disposal.

The business plan of the company was to obtain mining and landfilling permits for Star 14 and to commence coal mining/landfilling operations at that site. Since stripping ratios for coal at this site were generally favorable, the coal mining itself could be expected to break even financially. Landfilling, particularly given the cost sharing between mining and landfilling, would provide the operating profits for the site. Star 6 had been permitted by the DNR as a landfill in 1984 (Exhibit 9), but was never fully developed as a commercial landfill. It had been used to deposit coal residue from the wash plant

coal washing process. The deposited waste was from washing both Star Coal and the coal from other companies. Star 6, while accepting this waste, was considered an inspectable sanitary landfill site and was regularly inspected by the DNR. After Star 14 was operating and accepting landfill materials, Star 6 was to be used for coal combustion residue and ash, diatomaceous earth, special wastes and overflow needed for Star 14 landfilling contracts. Star 6 had the potential for providing customers with individual, identifiable cells for their waste which was an attractive option for certain major commercial and industrial customers. Star 14 and Star 6 were to be marketed together and ultimately operated on an integrated basis depending upon customer needs. Star 6 was a relatively small site of 10.3 acres. Star 14 was a larger site of 340 acres. The companies were also developing and permitting a much larger site at Star 15 of about 1,000 acres and the DNR permit application for this site was submitted to the DNR during April, 1988. While Star 15 was a part of the long range business plan of the company for a combination of coal mining and landfilling, the Plaintiffs in presenting damage issues to the Court have focused only on Star 6 and Star 14. With the exception of a bulldozer and a compactor, Iowa Coal/Star Coal had sufficient operational equipment in the spring of 1988 to open and commence operations at Star 14 upon issuance of a DNR permit and then to open and commence operations at Star 6. The coal mining permit for Star 14 was issued on May 6, 1988 and some clearing and subcontractor work was actually performed at the Star 14 site under this permit. Thereafter, a bond was posted for the mining permit.

In spite of the fact that the companies were somewhat financially stressed by the spring of 1988, the evidence shows that they had sufficient resources to make the opening and commencement of the Star 14 site economically feasible. A "start up" cash flow plan or projection was presented in detail and endorsed by serveral [sic] knowledgeable witnesses at trial (Luwe, Huyser, Pothoven, Toll and Crane). (Exhibits 44 and 45). Under the start up cash flow analysis, which is based in large part on the estimated design requirements and costs by Larry Crane and Randy Luwe, Phase 1 of the project would involve excavating in the first six (6) months, due to design of the project, sufficient "air space" to last the company for the first twelve (12) months of operation. This excavation would cost, at a contractor rate of $1.50 a cubic yard, $444,000. The evidence supports a finding that this figure is conservative because internal costs of excavation based on historical cost with company equipment was a maximum of 75 cents a cubic yard. The contractor price, if used, would involve no company equipment since the work would be done by an independent contractor. The leachate collection system proposed by the consulting engineers, but not at that time required by regulating agencies, would cost $2,830 an acre for the Phase 1 (4.46 acres), $13,000 for the first six (6) months of Phase 1. Operation of the site would, according to the consulting engineers, require a bulldozer at a cost of $250,000 and a compactor at a cost of $350,000. The compactor, however, would not be needed until the initial four (4) month excavation period was ended. The estimate of four (4) months is itself conservative and this work, including building sedimentation ponds, could be

done in as little as 90 days. In the cash flow analysis (Exhibit 44), costs are attributed to dozer purchase for six (6) months and the compactor for two (2) months. The companies had a historical tradition of purchasing equipment with either cash or by using a purchase money, dealer financing method common in the construction industry. (See Exhibit AA). While there is a dispute in the record as to whether two compactors would be needed at some point, the evidence supports the fact that the projection of one compactor is reasonable. (See Exhibit 48). Additionally, the 12 percent interest rate utilized is conservative. New equipment costs are calculated to be a total of $74,068 for the first six (6) months of Phase 1. Testimony that allocating $70,000 to road, well and fencing expense in Exhibit 44 is conservative. Operating expenses are based upon the operating cost estimates of the engineers of $52,000 a month at 500 tons of waste a day. (Exhibit 17). Royalties and post-closure fund payments (proposed by the engineers but not required at that time) bring the total cost for the first six (6) months to $754,668. On the revenue side, excavation of Phase 1 would produce coal revenues of $434,700 at $18 a ton for raw coal. The 24,150 tons of coal being removed would not have been a problem for the companies which historically could mine 20,000 to 25,000 tons a month. Additional coal reserves existed on portions of Star 14 which could be mined if desired. Solid waste tipping fees of $207,000 would be received based upon $9.40 a ton at 500 tons a day. The solid waste business is based upon cash transactions and the coal would be excavated and sold during the first three to four months of operation, with 30 day terms, so it is reasonable to assume that the revenues

projected would in fact be received in the first six month period. While the company had only $25,000 in bank debt as of June 30, 1988, it was required, commencing in 1988, to borrow $375,000 from the Pella National Bank (Exhibits 26 and 27). Ray Pothoven, a bank official handling the account, testified that he loaned the company $375,000 even after it had ceased active mining operations based upon the value of the construction equipment as collateral and the character and guarantee of James Huyser. The companies could have borrowed this amount or more if they had been able to operate. At the end of the first six (6) months based upon reasonable and conservative assumptions, operations would generate a positive cash flow of $262,032. During the second six months of operation no excavation would be involved. (Exhibit 45). Also, no leachate control or road/well costs would be necessary because it would be paid in the first six (6) months of Phase 1. Operating expenses for the full second six (6) months would be $432,000 based upon operating costs at 1,000 tons a day. Equipment costs would be $119,568 for the second six months and royalty and trust fund payments would be an additional $303,600. Waste stream revenues would be $1,241,000. Positive cash flow for the full 12 months of Phase 1 would be $647,864, or $869,864 if in-house equipment and personnel were used for excavation. At this point, Iowa Coal could pay off the Pella National Bank or continue to borrow money. (See Exhibits 26 and 27). If the companies achieved their projections of minimum tonnage of 1,000 tons a day of waste during both of the six-month periods, positive cash flow would be considerably higher and any bank debt would become

optional. There was no operational or financial impediment to the company going forward with this project, except the necessity of obtaining a DNR permit.

The company was also involved in advance or preliminary marketing of Star 14 and Star 6 for landfilling purposes, both in terms of municipal solid waste and return coal ash trips from coal customers. While no actual contracts could be executed for landfilling until a DNR permit was received, extensive contacts and market research were done by Randy Luwe, Jim Huyser and Larry Crane before May 13, 1988. With respect to municipalities and counties and others with their landfills, this marketing was timely due to the passage of the 1987 Iowa Groundwater Act which was to become effective on July 1, 1988 and would impose new, expensive requirements to operate landfills in Iowa. The DNR was attempting to reduce the number of small landfills and it was understood in the industry that the DNR would allow closure without full compliance with new rules. Engineering studies such as the Clapsaddle study in 1987 (Exhibit 20) were recommending regionalization of landfills at environmentally sound sites. Star Coal sent proposals and letters to various potential customers (see Exhibit 12) and numerous city and county officials were called at trial to comment on their recollections of the proposals and their landfilling activities since the fall of 1987/spring of 1988. All of this testimony must be viewed from the standpoint that the Monroe County Ordinance No. 6 was enacted before the DNR permit was issued preventing Star Coal from going further with potential customers. Nonetheless, even three years later at trial, several county and local officials testified that they actually visited the Star

sites, considered the site a viable option for them in view of the new legislation and would have pursued the possibility further absent the Monroe County zoning dispute. A number of these witnesses are receiving requests for disposal of "special wastes" and some of them are burdened with special waste disposal. The Des Moines Metro Landfill receives wastes which consist of 70 percent industrial, commercial and special wastes which are handled by private haulers. Before Ordinance 6, Des Moines Metro was interested in putting tires in the Star sites. After charging a $50 surcharge for disposal of tires, Des Moines Metro will forbid the disposal of tires at all after January, 1992. Many of the counties ended up executing agreements with other counties to perform landfilling. They have found that tipping fees for waste under these arrangements are accelerating due to the necessity of complying with new DNR rules. The tipping fees greatly exceed the $9.40 a ton tipping fee quoted by Star Coal which included compliance with anticipated rules.

At trial the Defendants presented the testimony of several witnesses who were involved in the governing of solid waste landfills throughout south central Iowa. Many of these witnesses testified that they do not believe that they would have executed agreements with the Plaintiffs, however, it appears that at least some of these witnesses were influenced by their knowledge of the zoning dispute between Monroe County and the Plaintiffs. The Court notes that the Defendants did not present private haulers of waste within these counties to testify for the Defendants.

Based upon the testimony at trial, it is reasonable to assume that if Star Coal had received a DNR permit

before it was prevented from opening the landfill by Ordinance No. 6, that it would have received some but not all of the local municipal solid waste business. Star Coal did not, however, limit its business plan to municipal waste. Two potential coal ash/residue customers have testified that they were very interested in utilizing the Star 14/6 sites and would have pursued negotiations if Star had, in fact, opened a landfill. (Exhibits 40, deposition of Thomas Ramlet; Exhibit 41, Deposition of Mike Thomes). The Metro Waste Control Commission in Minneapolis had 125,000 tons of ash on hand in early 1988 and was willing to pay Star Coal $12.50 a ton to dispose of it. Northern States power had 70,000 tons of incinerator ash in storage which needed to be landfilled and had 35,000 tons more of this material on an ongoing annual basis. They were also generating substantial coal ash. Hennepin County, Minnesota in 1989 started shipping 100,000 tons of ash per year to Illinois at higher tipping fees (See Exhibits 40 and 41). In connection with this type of marketing and with "special wastes" Star Coal had a distinct advantage by having two separate sites with individual cells. Star 6 was specifically permitted for coal combustion residue, coal ash, diatomaceous earth and, by August, 1988, tires from Minnesota (by letter amendment). There was considerable testimony from operators of landfills that "special waste authorizations" are routinely granted for disposal of "special wastes" in Iowa landfills and that such disposal commands very high tipping fees. Bob Huber of Washington County even stated that he kept a book of such "SWA's." The DNR permit itself, on its face, contemplates changes in customers, wastes and business operations by providing for

amendments. The amendment for Star 6 to take tires was done by an exchange of letters in a few weeks. DNR officials testified that changes are necessary and would not be withheld if there is compliance with DNR rules. Asbestos and demolition and construction wastes are commonly received in Iowa landfills from sources both within and outside the state. In many instances it is the companies collecting and hauling the solid waste making actual decisions on which landfills to use and these decisions are based largely on prices and profit margins. Mr. Bergan's company at the time of trial was hauling asbestos waste from Iowa Power in Des Moines to a landfill in Knoxville. Mr. Bergan also testified that there are waste brokers in this country who make it their business to deal in the disposal of solid waste to landfills.

Four expert witnesses testified at trial concerning the reasonableness of Star Coal's ability to obtain 1,000 tons a day at Star 14 and 500 tons a day at Star 6 at prices shown by the evidence. Randy Luwe, based upon his familiarity with his own customer contacts, the lanfilling [sic] industry, and Star Coal, supported the figures as reasonable. Larry Crane testified with definite opinions concerning expected tonnages. Mr. Crane was the most knowledgeable witness testifying concerning the landfill industry and the economics of landfills. He has a master's degree in engineering with an emphasis in solid waste management. He worked for a time with the U. S. Department of Health administering EPA regulations. From 1973 to 1982 he was the Director of the Iowa Department of Environmental quality, now the DNR, and supervised the entire Iowa regulatory scheme for solid waste projects. He has

lectured, done training and published concerning landfills, both in areas of planning and economics. He is licensed to apply specialty in three different states and has co-authored a training manual in use by landfill operators. In 1982 he founded the Des Moines office of Eugene Hickok & Associates, an office which now has merged with James M. Montgomery and has 36 employees with a myriad of professional specialties. He has regularly, on a daily basis, been involved in estimating costs, planning, analyzing rates of return and economic factors, designing, permitting, marketing surveys and direct marketing of numerous midwest landfills. He is familiar with waste streams available to landfills in Iowa, including types of waste and tonnages, and in eliminating waste streams for particular landfills. Mr. Crane testified that the following daily tonnages were reasonable and conservative to expect for Star sites: (a) 500 tons a day for the first six months at Star 14; (b) 1,0000 [sic] tons a day for the second six months and thereafter for Star 14; and (c) 500 tons a day for Star 6 commencing August 1, 1991 and thereafter. David Bergan is the president and manager of a major collection and hauling firm in the midwest which also operates a landfill near Lake Mills, Iowa. Mr. Bergan has extensive experience in the solid waste industry and in supervising both residential and commercial waste collection and disposal. Mr. Bergan was the only witness called at trial with direct experience in making decisions about which landfill would receive waste from the collection and hauling viewpoint. He expressed the opinion that with the inclusion of waste such as construction and demolition debris and asbestos the Star 14 site could easily attract 1,000 tons

a day and the Star sites could ultimately receive 3,000 tons a day at the prices projected. Defendants' own expert on landfilling, Leslie Wolfe, testified on cross-examination based on his prior deposition, that the Larry Crane estimates were reasonable and Star 14 could probably achieve 1,000 tons a day of solid waste. The Plaintiffs have shown by a preponderance of the evidence that their economic assumptions relative to price and waste streams are reasonable and conservative.

Plaintiff's Exhibit 62, being a letter dated April 11, 1988, from Billy K. Myers, Chairman of the Board of Supervisors of Monroe County, to Pete Hamlin of the DNR and Ken Tow of the Iowa Department of Agriculture, indicates a concern by Mr. Myers that Jim Huyser had predicted that the landfill would receive "2,000 tons of refuse per day." It appears to the Court that the Defendants fully believed that the Plaintiffs had the capability of attracting waste streams in that volume, and that was the motivating factor in causing the Defendants to rush through the adoption of Ordinance 6, without taking the necessary time to develop a comprehensive plan, as required by Section 358A.5 of the Code of Iowa.

The evidence further shows that in September of 1987 Mr. Gary Pryor, who was then head of Planning and Zoning for Polk County, was called by a female supervisor from Monroe County and she asked for advice on an ordinance to prevent or impede a landfill project. Mr. Pryor suggested a "public health" ordinance, later to become Ordinance 4, which requires approval of the Board of Supervisors to operate a sanitary landfill in

Monroe County. (Exhibit F). The first reading of Ordinance 4 was on September 11, 1987 and it was adopted on September 17, 1987.

Gary Pryor, who is now City Planner for the City of Omaha, Nebraska and contiguous areas, testified concerning both Ordinance 4 and Ordinance 6. Mr. Pryor has extensive experience as a zoning administrator in daily interpretation and application of ordinances. He testified that Ordinance 4 is not a zoning ordinance but is generally in the category of a public health ordinance. In general, it requires, if applicable, a county permit to operate a landfill and compliance with enumerated general standards and a bond. No specific standards are listed. At the time Ordinance 4 was enacted, two other landfills were operating in Monroe County: Cargill at Eddyville and the Monroe County Landfill near Chariton. Ordinance No. 4 in paragraph 9, at page 7, contains the following language (under "EFFECTIVE DATE"): "Any disposal facility that has accepted the dumping and disposal of solid wastes at its location of operation prior to the date of this ordinance becomes effective is expressly exempted." (Exhibit F). Star 6 had received solid waste disposal before September 24, 1987. In the opinion of Mr. Pryor, Star 6 and 14 were exempt under this ordinance and no permit or permit application was required of Star Coal. No permit or permit application was ever required by the other two existing landfills in Monroe County. Mr. Pryor considered that Star 6 and Star 14 were part of an integrated operation, permitting process and marketing plan and were to be operated together and should be considered together under the exemption language. This testimony of Mr. Pryor appears to be uncontradicted and

is accepted by the Court. There appears to be no evidence that Monroe County attempted to enforce Ordinance No. 4 at any time. Even if Ordinance No. 4 did apply, the county, directly and through Burton Kross, requested and received review by the DNR of matters referenceed [sic] in the ordinance and the evidence is uncontradicted that the DNR, at the request of Monroe County, required information and compliance by Star Coal with rules and regulations which did not yet exist. By seeking review of the "public health" matters in the ordinance and subsequent issuance of a permit by the DNR, the county appears to have delegated review and approval to the DNR.

Ordinance 6 in final form forbids coal mining and landfilling in combination. Landfilling can only take place in I-2 districts. (Exhibit 2). Star Coal sites 6 and 14 are zoned agricultural and neither under the ordinance could be utilized for landfilling without amendment to the ordinance itself. The ordinance further makes coal mining a conditional use in A-1 and A-2 districts which as a practical matter required Iowa Coal/Star Coal to seek permission from the county to mine coal. A rezoning of the Star 6 and 14 sites to I-2, under the language of the ordinance, would not allow coal mining so a combination of coal mining/landfilling still would not be allowed. Mr. Pryor testified that zoning and zoning administration depends upon citizens such as Star Coal using the legal process to challenge zoning and zoning decisions and that it could be expected that Star Coal would challenge the ordinance in the courts as opposed to simply starting its project. If the proper statutory procedure for Ordinance No. 6 had been utilized by the Defendants it would

have taken six (6) months to develop a comprehensive plan and three (3) months to implement a proper zoning ordinance. The DNR permit was issued three days after the enactment of the invalid ordinance and the company planned to commence excavation immediately upon permitting with solid waste being accepted at the latest by August 1, 1988. If Ordinance No. 6 had not prevented the project, under the view of all experts testifying on this subject at trial, Star 6 and 14 would have, based upon physical use, have been a legal non-conforming use under any zoning ordinance. Based upon the uncontradicted testimony of Mr. Pryor, if Phase 1 of Star 14 was in physical use at the adoption of a valid ordinance, the entire Star 6 and 14 sites would have constituted a "grandfathered" use and the zoning would not have affected the project.

Ordinance No. 7 (Exhibit 15) was enacted in August, 1990, and had to the time of trial not been legally challenged. Ordinance 7 and its zoning map (Exhibit 14) are virtually identical to Ordinance 6 and its map (there are some minor changes). The Court does not need to address the impact of this ordinance on the project because the damage to Star Coal by Ordinance 6 was already ongoing and irreversible by the time it was enacted. If Star 6 and 14 had been able to operate before this ordinance they would have constituted legal, non-conforming uses under the ordinance.

The enactment of Ordinance 6 had a real and devastating economic impact on the Plaintiffs. Prior to the passage of the ordinance, Jim Huyser announced publicly that he would have to cease operations if the county proceeded with it in its proposed form. By June 20, 1988

he had laid off all employees except a few key employees and a mining reclamation crew. (Exhibit 3). While operations ceased, expenses were still ongoing for reclamation and to keep the company intact as possible during the legal challenge to the ordinance. Reclamation continued into November, 1989. By June 30, 1990 (there was no financial statement done for 1989), current liabilities exceeded current assets by $2,406,422 and retained earnings had dropped to a negative $1,836,122. (Exhibit DD). The June 30, 1990 financial statement, based on inquiry and research by the auditors, specifically cites "new zoning laws prohibiting the company from operating a landfill" as a reason the company had to suspend operations in June, 1988. (Exhibit DD, note on page 9). Negotiations with Waste Systems, Inc. to potentially operate the landfill were terminated based on Ordinance 6 and related issues. The initial Petition challenging the ordinance was filed on May 5, 1988, after the second reading of the ordinance, but due to the legal process involved, the Court's decision was not filed until December 27, 1989. By that time, there was no ongoing marketing, no transportation and contract trucks available, no labor force and finances had deteriorated. By this point in time, unlike in May, 1988, Star Coal was unable to pursue the project on its own. Star Coal was confronted with appeals pursued after the Court's ruling and with potential future appeals. (See Exhibit 67). Potential customers had pursued other options. Coal and ash customers had ended up with a competing coal company. The trial on the issue of damages did not conclude until April 25, 1991 and the Plaintiffs after decision is rendered on these issues will still be confronted with the potential possibility of further

appeals. The uncontradicted testimony of Jim Huyser is that these proceedings, while made necessary by ordinance No. 6, put a "cloud" on the viability of his project and business. Even if the county had given permission to mine coal, coal mining alone could not take place on the new site without destroying its intended use as a landfill (Exhibit 37) and waiving the economic benefits and investment in that use. George Haines testified that had the project been allowed to go forward as projected and using the numbers of Dr. Mattila, Defendant's economist, (Exhibit 46 and 47), the financial results of the company would have shown a 100 percent turnaround from those shown in the 1990 financial statement and the company would have been a viable business.

Subsequent to cessation of active mining operations, Iowa Coal did engage in negotiations with Moreland Minerals and George Ide and Associates as stated above. The purchase price of $5 million is reflected in the George Ide transaction which was not consummated and contrasts sharply with the minimum value of $20 million that Jim Huyser testified that he would have taken for his company before passage of Ordinance No. 6. It was his testimony that he would not have negotiated with either Moreland or George Ide and Associates had it not been for the ordinance and attendant litigation. The George Ide transaction was never consummated because financing was never obtained. It was understood that it was dependent upon the cooperation of the county and the agreement was terminated in January, 1991. The primary asset being purchased was the leases permitted for landfilling and George Ide considered the project to have great profit potential if it were allowed to proceed. (Exhibit 65).

Star Coal and Iowa Coal have presented their damages for loss of business opportunity in terms of the discounted value of lost profits based upon certain assumptions. Cost assumptions were done by Randy Luwe and Larry Crane as a part of their financial analysis of the proposed landfilling project without reference or knowledge that there would later be a lawsuit. (Exhibits 17 and 18). These figures were utilized by Star Coal to calculate initial "tipping fees" to be quoted to potential customers and include costs for items not required by the DNR rules. The costs are for a "state of the art" operation and actually contemplate rules and regulations to be adopted by the DNR in response to the 1987 Groundwater Act. Most of the requirements contained in the Montgomery model have now become a reality and other landfills are incurring substantial expenses, with attendant increases in tipping fees, to comply. At least two landfills, one being the Marion County landfill, are currently operating in Iowa without a valid permit while they attempt to comply with new requirements which were designed into the Star 6 and Star 14 sites. The Court notes that the Marion County site, which is ultimately to be designated as the landfill for the counties included in the Clapsaddle study, had been the site of an abandoned coal mine. There is testimony in the record that abandoned coal mine sites do not lend themselves to be environmentally suitable for the operation of sanitary landfills. These types of landfills will be required to incur costs which include leachate control, financial assurances and post-closure trust funds. The costs and other assumptions developed by Luwe and Crane were given to Dr. Tom Pogue and Dr. Joel Horowitz, economists with the

University of Iowa for analysis and projection. (Exhibit 29 and 30 (a)-(k)). Dr. Pogue presented these numbers at trial. The information and materials supplied to him were of the type normally used by economists in projecting lost value in terms of discounted lost profits. In connection with his analysis, he consulted with Jim Huyser, Randy Luwe and Larry Crane. He was able to determine an income stream for Star 6 and Star 14 and then discount them to present value, using a conservative discount rate for the life of the landfills. He testified that in his opinion the lost profits for Star 14 in terms of 1988 dollars is $11,873,256 and in terms of 1990 dollars is $13,350,289. For Star 6, the loss of profits is $1,894,000 in 1988 dollars and $2,129,000 in 1990 dollars. The income projections for Star 14 were based on the assumtion [sic] that Star 14 would receive 1,000 tons a day of solid waste at $9.40 a ton commencing on August 1, 1988 for 260 days of operation a year and that these figures would remain constant. For Star 6, he assumed 500 tons a day commencing on August 1, 1990 at $11.52 a ton. Costs for Star 6 were calculated somewhat higher by Larry Crane due to greater expense of overburden removal. The assumptions of 1,000 and 500 tons a day are reasonable and in fact conservative based on the evidence, particularly for years after initial start up. The tipping fees are also reasonable and conservative for the life of the landfills and there is considerable evidence in the record that tipping fees, especially for special wastes, have already more than tripled in the industry since 1988. If a $15 tipping fee were assumed, Star 14 at the same tonnage would produce $32,283,000 in lost profits under the Pogue economic model. A two year delay in receiving any tonnage for Star

14 would only reduce loss of profits to $12,625,000. The assumptions also include a projected savings of 80 cents per ton from coal mining savings for Star 14 and this cost savings is uncontradicted by any other evidence. For Star 6 cost savings represent one-half of the costs. Since the economic model is a function of combining tonnage and tipping fees, an actual average tipping fee of $19 for Star Coal would mean that only 500 tons a day would be needed to achieve the same profit levels. (This would have been better for Iowa Coal because costs would be reduced and the life of the project would be extended). The economic projections by Dr. Pogue are based on assumptions supported by the record as feasible and his analysis includes all significant factors in projecting a loss to Star Coal due to Ordinance No. 6 and the wrongful actions of the Defendants. The effect of receiving these dollars at the present as opposed to over the life of the project has been included. Defendants' own economic expert, even after assuming additional costs and deductions, projected lost profits of $7,908,682 for Star 14 and $1,459,082 for Star 6 on an undiscounted basis. (Exhibit 47).

Dr. Pogue also testified regarding his calculation of the loss to Jim Huyser for coal royalties and for solid waste royalties. Jim Huyser's agreement with Plaintiff corporations provided that he would assign to them the leases that gave him mineral rights and landfilling rights to certain property in exchange for payment to him of a royalty on solid waste deposited in the landfill sites and coal mined and sold from the coal mining sites.

In dealing with the lost coal mining revenues of Jim Huyser, it is apparent that his claim is made very conservatively. His claim for coal royalties lost is based upon coal mined from the landfilling site only. It is clear from the evidence, however, that coal mining would have occurred on portions of the permitted site other than the area where the landfilling was to take place. No claim, however, has been made for the lost coal revenues for any coal mined other than at the site of the landfilling operation.

The evidence shows that it would take one ton of coal removed to provide space for 10 tons of solid waste, and, therefore, in order to generate sufficient air space for 260,000 tons per year of solid waste, it would be necessary to mine 26,000 tons of coal. This amount of coal would be quite low for Star Coal since they had mined in the past 20,000 to 25,000 tons of coal per month.

Jim Huyser's agreement makes it clear his coal royalties would be $1.50 per ton from coal mined and sold. The evidence showed that 26,000 tons of coal would be mined each year to create space for 260,000 tons of solid waste. Based upon the mining and selling of 26,000 tons of coal, Jim Huyser's royalty would have been in 1989 $39,000. The annual coal royalties for each year would then be the same and were assumed not to be adjusted for inflation. Therefore, in making the calculations, the value of the royalty payment is reduced in each year after 1988, both because of inflation assumed to be 5 percent per year and because of the real discount rate of 3 percent, which reflects the assumption that dollars can be invested to yield a real return of 3 percent. This assumption is based upon historical evidence that the long run average

real return on investments such as common stock has been about 3 percent.

The total loss to Jim Huyser in coal royalties from Star 14 is then determined to be $371,070 based on 1990 dollars.

Making the same calculations with regard to coal royalties on Star 6, it was assumed that 13,000 tons of coal per year would be mined at Star 6. At $1.50 per ton, the annual coal royalties on Star 6 would then be $19,500. Royalties, however, were assumed not to be adjusted for inflation, and, therefore, the royalty payment is reduced in each year both because of inflation assumed to be 5 percent per year and because of the real discount rate of 3 percent which again reflects the assumption that dollars invested can yield a real return of 3 percent. This assumption is, in turn, based upon historical evidence that the long range average real return on investments such as common stock is 3 percent. Adjusted to November 1990 then, the loss for the life of the site at Star 6 estimated to be 6.4 years is $97,472.

Estimates with regard to Star 6 also reflect the same conservative nature of the calculations and, in addition with Star 6 as well as Star 14, since adjustment was made only to the price level of November of 1990, the loss is still conservative. If the loss were calculated to May of 1991, it would be even higher. Therefore, the lost coal royalties that Jim Huyser sustained as a result of the passage of Ordinance No. 6 and the inability to continue to mine coal at Star 14 and Star 6 landfill sites totals $468,542.

With regard to the lost solid waste royalties on Star 14, the calculations made by Dr. Pogue were based upon the life of the site and utilization of that site at 260,000 tons per year or 1,000 tons per day for 260 days. The tipping fee was calculated to be $9.40 per ton for the life of the site. This figure has turned out to be extremely conservative in light of the rapidly accelerating tipping fees for solid municipal waste disposal. In providing the lost solid waste royalties, the tipping fee was multiplied by 18 percent, which is the amount that Jim Huyser was to be paid based on his royalty agreement with the company. The loss is based upon 1988 dollars and if adjusted for inflation from August of 1988 to November of 1990, the loss sustained by Jim Huyser on Star 14 for lost solid waste royalties is $5,418,354. Using the same calculation for Star 6, the lost royalties sustained by Jim Huyser on Star 6 for the life of the site adjusted to November of 1990 are $1,685,062. The total loss to Jim Huyser for the lost coal royalties on Star 6 and Star 14 and the lost waste royalties on Star 6 and Star 14 throughout the life of each project totals, therefore, $7,571,958.

The Court notes that Jim Huyser's tax return for 1985 on Form 4797 reflects that in that year he received $286,684 in coal royalties only, and on his 1986 Form 4797 filed with the income tax return showed that he received coal royalties in the amount of $296,896. His 1989 tax return shows coal royalty income on Form 4797 in the amount of $15,779.

With regard to the calculations presented by Dr. Pogue both with regard to lost profits of the corporation and lost royalties for Jim Huyser did not include any deduction or calculation with regard to the income tax

ramifications of these items. It is anticipated that any award that may be made by the Court with regard to lost royalties or lost profits will be taxable, therefore, no calculation has been made with regard to these matters.

The Court further finds that loss of profit figures of Mr. Pogue as to the loss of business value or opportunity damages for the corporate Plaintiffs as well as the loss of royalties to Jim Huyser should be reduced to take into account various contingencies which possibly might have occurred during the projected coal mine/landfill operations of Star 6 and Star 14. It is possible that the waste streams of solid waste may have been slower in developing and the corporate plaintiffs may have had to incur additional expense by contributing to the cost of transfer stations at various communities to make the plan for the flow of solid waste more workable. There is also the possibility that the volume of solid waste near the end of the cycle on Star 14 may have been reduced by the waste reduction provisions of the Ground Water Protection Act. Also adverse weather conditions from time to time may have affected Plaintiffs' mining and landfilling operations.

The Court notes that Defendant's expert witness Dr. Peter Mattila on cross-examination after assuming additional costs and deductions projected the lost profits from Star 14 to be $7,908,682 and for Star 6 to be $1,459,082 on an undiscounted basis. According to Exhibit 47, Dr. Mattila testified that the total loss for the two corporate Plaintiffs totaled $9,367,662 in 1988 figures and when inflated to 1990 value the total would amount to $10,278,667 in undiscounted profits.

The Court finds that the damages to the corporate Plaintiffs should be set at $10,319,526 and the damages for Plaintiff Jim Huyser should be set at $5,047,972.

The Court also finds that the affirmative defense of lack of mitigation by Defendants, raised in their Amendment to Answer, has not been shown by the evidence.

From the foregoing findings of fact, the Court reaches the following

CONCLUSIONS OF LAW

The Court in its December 27, 1989 Decree determined that the Defendants acted illegally and outside the scope of their authority in enacting Zoning Ordinance No. 6. The Court in its previous ruling declared the zoning ordinance void, and the issue of damages is based upon damages arising from the illegal actions of the Defendants. These damages are the consequential damages arising from such illegal actions of the Defendants.

The general purpose of damage awards is to place the damaged party in as favorable position as if no wrongful act had occurred. *RET Corp. v. Frank Paxton Co., Inc.*, 329 N.W.2d 416 (Iowa 1983). The Court in its Findings of Fact has found that the Plaintiffs have sustained their burden of proving damages by showing loss of business opportunity by proof of the present value of lost profits and lost royalties that Plaintiffs would have received absent the illegal acts of the Defendants. Lost profits are an appropriate manner in which to measure damages from business interruption. *Mills County v. Guthrie County Rural Electric*, 454 N.W.2d 846 (Iowa 1990);

Bushman v. Cuckler Building Systems, 421 N.W.2d 145 (Iowa Ct. App. 1988); *Nachazel v. Miraco Manufacturing*, 432 N.W.2d 158 (Iowa 1988). *Kempf v. City of Iowa City*, 402 N.W.2d 393, 398 (Iowa 1987). Evidence of lost profits will only be rejected if proof of such profits is speculative, contingent, conjectural, remote or uncertain. *Shinrone, Inc. v. Tasco, Inc.*, 283 N.W.2d 280 (Iowa 1979). The mere difficulty in ascertaining the amount of damages is not grounds for denying recovery. *Shinrone*, supra, *Orkin Exterminating Co., Inc. v. Burnett*, 160 N.W.2d 427 (Iowa 1968). In *Harsha v. State Savings Bank*, 346 N.W.2d 791 (Iowa 1984), the Iowa Supreme Court considered these principles and the application of the Iowa "new business" rule to a claim lost profits (arising from tortious interference with business relationship and breach of contract). In that case the plaintiff proved lost business as lost profits he would have reaped if the tortious conduct had not occurred. The Court noted that under the Iowa "new business" rule potential profits can be too speculative to recover for an "untried business." At the same time, the Court held that the "new business" rule is not absolute. If factual data is presented which furnishes a basis for compilation of probable loss of profits, evidence of future profits should be accepted. The Court specifically describes expert testimony proving lost profits with reasonable certainty based upon experience, expert consideration of relevant factors, expert experience, the willingness of management to put in the time and effort to succeed and prior sales experience. The Court also makes reference to the fact the defendant caused elements of the loss number. The Court concluded that

although plaintiff was opening and operating a new livestock feed sales business, the lost profits had been proven with reasonable certainty and were submissible to the jury.

In the present case, the evidence does not support the fact that landfilling was a new business with untried business assumptions and experience. The principle of the "new business" rule, that proof of lost profits should not be overly conjectural, would, however, apply as a measure of proof. The Court concludes that the "new business" rule does not apply factually or as a matter of law and that proof of damages has been sufficiently certain to justify an award of damages. The experts testifying in this action for the Plaintiffs have considerable experience in their areas of specialty, addressed all relevant factors relating to the landfilling project, and have credibility. Management had prior experience in many aspects of the proposed venture and had exhibited a real motivation to devote the necessary time and resources to the project to realize profits. The Defendants themselves created a situation in which the loss occurred and directly and indirectly caused claimed uncertainties upon which they now rely for a defense. The fact that factual issues exist which must be resolved by the finder of fact does not as a legal matter preclude an award of lost profits. *Orkin Exterminating Co., Inc. v. Burnett*, supra. The record supports the conclusion that it was clearly forseeable by Defendants that Plaintiffs would sustain business damages and that damages were, in fact, sustained. The proof of lost profits is, according to expert testimony in this action, equivalent to proof of the value of lost business opportunity to the corporate Plaintiffs. The same is true

with respect to the issue of lost royalties to the individual Plaintiff Jim Huyser. The amount of damages is under the law to be determined by the Court as finder of fact and sufficient, definite evidence and opinions were provided and exist in the record upon which to base a damage award decision.

The extent to which Defendants rely upon the existence or application of Ordinance 4 as a defense to Plaintiffs' damage claim is unclear. The Court, in its Findings of Fact, has found that, based upon the evidence, Star 14 and 6 were exempt under the language of the ordinance. The evidence also supports the fact of delegation of review of environmental and other issues by the Defendants to the DNR. The DNR is charged with the responsibility pursuant to statute to regulate solid waste activity in the state and has specific expertise in the area of environmental safety. See *Code of Iowa* Chapter 455A and 455B (1991). In other states conflict between comprehensive state environmental protection schemes and local ordinances have limited the ability of local governments to regulate landfilling and mining and in some jurisdictions courts have found preemption by state law and permitting. *Shelton v. Commissioner of Department of Environmental Protection*, 479 A.2d 208, 214-215 (Conn. 1984) (local zoning ordinance prohibiting regional landfill preempted); *American Smelting & Refining Co. v. County of Knox*, 60 Ill.2d 133, 139, 324 N.E.2d 398, 401 (1974) (local zoning could not prohibit surface mining allowed under a state permit); *Carlson v. Village of Worth*, 62 Ill.2d 406, 343 N.E.2d 493, 496 (1975) (local ordinance licensing landfills preempted by sttate [sic] law.); *Colchester v. Reduction Associates, Inc.*, 34 Conn. Sup. 177, 382 A.2d 1333,

1334-1335 (Conn. C. P. 1977) (local regulation barring disposal of baled waste preempted by state permit); *Southern Ocean Landfill, Inc. v. Mayor and Council of the Township of Ocean*, 64 N.J. 190, 314 A.2d 65, 67 (1973) (local landfilling regulation preempted by state permit); *O'Connor v. City of Rockford*, 52 Ill.2d 360, 288 N.E.2d 432, 436 (1972) (County zoning could not prohibit sanitary landfill operating under state permit).

The Iowa DNR issued a permit based in part upon the environmental and other matters submitted by Defendants and their consultant to the DNR. Even if the landfill sites were not exempt under Ordinance 4, the ability of Monroe County to review and restrict such matters is limited or preempted.

The Court has found in its Findings of Fact that the defense of lack of mitigation by Defendants was not proven at trial. The Court notes that the Iowa Supreme Court has further held that a lack of sufficient funds would excuse an absence of further efforts to lessen damages. *RET Corp. v. Frank Paxton Co., Inc.*, supra, at page 422.

With regard to the issue of whether the individual Defendants, being Billie K. Myers, Raymond Vance, and Helen Sinclair, members of the Board of Supervisors of Monroe County, should be held personally liable for damages, the Court concludes that these individual Defendants in adopting Ordinance No. 6 were acting in a legislative capacity. Zoning is a legislative function. *Peterson v. City of Decorah*, 259 N.W.2d 553, 555 (Iowa App. 1977). In the case of *Lough v. City of Estherville*, 122 Iowa 479, 98 N.W. 308 (Iowa 1904), the Iowa Supreme Court

held that City Council members acting either in a judicial or legislative capacity cannot be held liable on damages on account of acts done by the members in their official capacity. In the case of *Gorman Towers, Inc. v. Bogoslavsky*, 626 Fed.2d 607 (8th Cir., 1980), the Court held that City Council members are legislatively immune from a civil rights action where the Plaintiff claimed that the Council passed an invalid zoning amendment. In the case of *Heiar v. Crawford County, Wisconsin*, 558 Fed.Supp. 1175, (N.D. Wisconsin, 1983), the Court held that the members of a county board are legislatively immune from a civil rights action wherein the Plaintiff alleged that the board introduced, debated, and adopted an unconstitutional resolution regarding mandatory retirement.

The Court further notes that individual Defendant Raymond Vance died on December 18, 1988. There has been no showing that the personal representative of the Raymond Vance estate was substituted as successor defendant within this case within two years from his death as required by R.C.P. 15. The Court therefore concludes that judgment for damages should not be rendered against Billy K. Myers, Raymond Vance, and Helen Sinclair, as individuals.

From the foregoing Findings of Fact and Conclusions of Law, the Court makes the following

JUDGMENT ENTRY

It is hereby ORDERED, ADJUDGED AND DECREED that the Plaintiffs, Iowa Coal Mining Company, Inc. and Star Coal Mining Company, Inc. are entitled to and are hereby awarded judgment for compensatory damages in

the sum of $10,319,526. against Monroe County, Iowa, with interest thereon at the rate of 10 percent per annum from and after May 5, 1988.

It is further ORDERED, ADJUDGED AND DECREED that the Plaintiff Jim Huyser, is entitled to and is hereby awarded judgment for compensatory damages in the sum of $5,047,972. against Monroe County, Iowa, with interest thereon at the rate of 10 percent per annum from and after the 5th day of May, 1988.

It is further ORDERED that the costs of this action in the sum of $(Costs to be determined at a later date) (to be computed by the Clerk) are hereby assessed against said Defendant and judgment is hereby rendered against the Defendant for the payment of said costs.

It is further ORDERED that Raymond Vance, now deceased, Billy K. Myers, and Helen Sinclair, as individuals, are dismissed as Defendants in this action and that IDF Acquisition Corp., as Intervenor, should be and it is also dismissed from this action.

Dated this 18th day of June, 1991.

/s/ James P. Rielly
JUDGE, 8TH JUDICIAL
DISTRICT OF IOWA

Illegible
19th day of June, 1991.
/s/ Rhonda L. Rardin

Copy to: R. Jeffrey Lewis & Joseph G. VanWinkle
James Blomgren
Lee H. Gaudineer
Annette Scieszinski
John G. Fletcher

IN THE IOWA DISTRICT COURT
FOR MONROE COUNTY

IOWA COAL MINING COMPANY, INC., STAR COAL MIINING [sic] COMPANY, INC., and JIM HUYSER, Plaintiffs, vs. BILLY K. MYERS, RAYMOND VANCE, HELEN SINCLAIR, THE BOARD OF SUPERVISORS OF MONROE COUNTY, IOWA and MONROE COUNTY, IOWA, Defendants.	No. CL 54-0588 CL 72-1088 FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE (Filed Dec. 27, 1989)

On May 5, 1988, the Plaintiffs filed herein their Petition for Writ of Certiorari, Declaratory Relief and Temporary Injunction, which case is captioned as CL 54-0588. Thereafter, on the 25th of October, 1988, the Plaintiffs also filed a Petition for Writ of Certiorari and Declaratory Relief, which action is captioned as CL 72-1088. Both of these cases were thereafter consolidated for trial.

Upon the issues as tendered by the pleadings, these cases were tried to the Court commencing on November 1, 1989 and trial concluded on the 2nd of November, 1989. At that time each of the parties requested leave of court to file proposed findings of fact, conclusions of law and decree, and the Court set a deadline of November 27,

1989 within which to file such matters. The Court has now received the proposed findings from both the Plaintiffs and the Defendants and the Court considers these matters fully submitted for a ruling.

From the evidence received at trial, the Court makes the following

FINDINGS OF FACT

Iowa Coal Mining Company, Inc., and Star Coal Mining Company, Inc., are corporations, organized and existing under the laws of the State of Iowa, and their principal place of business is situated in Monroe County, Iowa. Jim Huyser is the President and majority shareholder of both corporations. These three Plaintiffs, individually and collectively herein, will hereinafter be referred to as "Star Coal."

Defendants Billy K. Myers, Raymond Vance and Helen Sinclair, at all material times hereto, were the duly elected, qualified and acting members of the Board of Supervisors for Monroe County, Iowa. These Defendants, individually and collectively, as well as Monroe County, will hereinafter be referred to as "Monroe County."

Star Coal has operated a strip-mining coal operation in Monroe County, near Lovilia since June, 1978. Star Coal was a major employer within the County and had a coal processing station located on their property west of Lovilia. Star Coal also has a landfill, known as "Star #6," for the disposal of solid coal and "fly ash" residue located west of Lovilia in Monroe County.

In the spring of 1987, Star Coal determined that it could not rely upon fluctuating coal prices to remain profitable and set-out upon a venture that would merge their coal mining operation with a solid waste disposal operation. Star Coal conducted geological studies to confirm that Monroe County's geology was suitable for both coal mining and landfilling operations.

In the fall of 1987, there were discussions between the Defendants with regard to the matter of the proposed landfill in Monroe County. Defendant Billy K. Myers testified at trial that Raymond Vance, who is now deceased but who was a member of the Board of Supervisors in the fall of 1987, stated that the adoption of county zoning would stop the landfill that was being proposed.

On the 27th of October, 1987, the Defendants employed the Area XV Regional Planning Commission to provide technical assistance to the Defendants. A copy of the contract for technical assistance is in evidence as Defendant's Exhibit 1. This contract provided, in part, that:

> "B. SCOPE OF SERVICES. The RPC shall provide the County with the following services:
>
> 1. The RPC shall update the county land use map to the extent required for the preparation of a zoning ordinance.
>
> 2. The RPC shall prepare and submit to the County the written text and county zoning map which, when legally adopted in accordance with Chapter 358A of the Code of Iowa, shall become the Monroe County Zoning Ordinance.

3. The RPC staff shall attend the public hearing required under Chapter 358A of the Code of Iowa."

The agreement further provided that the RPC would receive the sum of $500 for the technical assistance which it was to provide. Monroe County also paid annual membership dues to RPC. The Court further notes that the contract provides the following language, to-wit:

"E. LITIGATION. The County agrees to pay the cost of any litigation arising from the failure of the County to comply with the provisions of Chapter 358A of the Code of Iowa governing county zoning.

Furthermore, the County shall indemnify and save harmless the RPC from suits, actions or claims of any character brought for or on account of any injuries or damages received by any person or property resulting from the operations of the County or any person working for the County during the administration of the zoning ordinance."

This contract was executed on behalf of the Defendants by Raymond Vance, who was then Chairman of the Board, and by Bernard F. Carr, who was chairman of the Area XV Regional Planning Commission.

Thereafter, Allen D. Heuton, the Executive Director of the Area XV Regional Planning Commission, proceeded to prepare a proposed zoning ordinance for Monroe County.

Star Coal submitted their application for a permit for a landfilling operation to the Iowa Department of Natural Resources on January 19, 1988. Thereafter, Monroe

County appointed the Monroe County Zoning Commission on January 28, 1988.

The record shows that Chairman Myers and Supervisor Sinclair wrote letters to the Environmental Protection Division of the Department of Natural Resources and to the Mines and Minerals Division of the Department of Agriculture and Land Stewardship in the spring of 1988 in which they indicated that they had environmental, health and economic concerns regarding the application by Star Coal for a landfill permit. These letters are contained in the exhibits that were submitted at the hearing held with regard to Star Coal's application for temporary injunction which was held on May 6, 1988. These letters as well as testimony with regard to telephone calls show that these supervisors attempted to delay or stop the issuance of both a coal mining permit and a landfilling permit to Star Coal.

Allen Heuton testified that he did not at any time prepare a single document which was designated as a "comprehensive plan" prior to drafting the proposed Monroe County Zoning Ordinance; instead, he drove through Monroe County to determine the present use of the land within the county, reviewed the documents Monroe County as certified to the Court, and, from this, he developed his zoning ordinance and zoning map. It does not appear that Heuton received any input from Monroe County or the Monroe County Zoning Commission or the public during the initial stage of the development of his proposed Monroe County zoning ordinance and zoning map.

The Zoning Commission had their first meeting on March 2, 1988. Al Heuton confirmed that the first proposed zoning ordinance and zoning map for Monroe County included landfilling in an A-2 District as a "conditional use." It would therefore appear that under Heuton's initial proposal, both mining and landfilling could have been conducted within the same zoning district, subject to the issuance of a permit by the Monroe County Board of Adjustment. At the first meeting of the Commission on March 2, 1988, Larry Pillard, who is now the Chairman of the Monroe County Zoning Commission, testified that he suggested that the zoning ordinance be changed to make landfilling a "conditional use" only in an I-2 "Heavy Industrial District." He testified that he believed that this was proper in view of the literature with regard to the solid waste disposal which indicates that the preferred method of disposal in the future will be the process of recycling. He testified that he believed that recycling would involve that type of activity which would be best suited for an I-2 District.

The certification by Monroe County shows that the Monroe County Zoning Commission thereafter held public meetings on March 11, 1988 and on March 21, 1988. On April 7, 1988, the Zoning Commission held a public hearing to consider the adoption of the final report on the comprehensive zoning ordinance for Monroe County which is required pursuant to the provisions of Section 358A.8 of the Iowa Code. The minutes of the April 7, 1988 meeting of the Monroe County Zoning Commission show that 31 persons were entitled to speak at the hearing and each would be entitled to three minutes of time. At that meeting Randy Luwe, a geologist who is employed by

Star Coal, as well as Jim Huyser, President of Star Coal, voiced their objections to the proposed zoning ordinance.

Thereafter, the Zoning Commission held a further meeting on April 14, 1988 and made certain modifications with regard to the proposed zoning ordinance. Thereafter, on April 21, 1988, the Zoning Commission held a further meeting at which further amendments were adopted to the proposed zoning ordinance, and at the conclusion of that meeting the Zoning Commission adopted a resolution providing that the final report of the Commission be forwarded to the Monroe County Supervisors, and the resolution provided, in part, that:

> "In the event a comprehensive county zoning ordinance is to be enacted in Monroe County, the draft considered and as amended by the Commission is submitted as the proper ordinances to be enacted."

In response to the letters and phone calls received from Chairman Myers and Supervisor Sinclair, the Iowa Department of Natural Resources agreed to hold a public meeting in Albia before the issuance of a landfill permit to Star Coal, notwithstanding the fact that no public meeting was required by statute. The Department of Natural Resources set the date of May 9, 1988 for the public meeting. The record further shows that on April 29, 1988, the Monroe County Board of Supervisors held a meeting at 1:00 p.m. and at that time had the first reading of the proposed Monroe County Zoning Ordinance. Following the first reading of the ordinance, a motion was passed by the Board to adopt the zoning ordinance and this motion indicated that a second reading, consideration and vote for passage be held at 8:00 a.m. on Monday, May 2, 1988.

On Monday, May 2, 1988, the second reading was had and thereafter a motion was passed adopting the ordinance on its second reading, and this motion provided that the third and final reading, consideration and vote for passage would be held on Monday, May 9, 1988, at 1:00 p.m. On May 3, 1988, the Board of Supervisors published the ordinance in the Monroe County News, and on May 5, 1988, the ordinance was published in the Albia Union Republican.

On May 4, 1988, an agenda notice was posted to the public indicating that a public hearing in relation to the enactment of a comprehensive zoning ordinance would be held at 8:00 a.m. on Monday, May 9, 1988, and that the third and final reading of the comprehensive zoning ordinance would be held at 1:00 p.m. on that day.

The minutes of the May 9, 1988 meeting of the Board of Supervisors show that the zoning ordinance was passed on its final reading and adopted by the Board of Supervisors with Supervisors Myers and Sinclair voting in favor of its passage. Supervisor Raymond Vance was absent from that meeting.

The record further shows that on May 10, 1988, the adopted ordinance was published in the Monroe County News and on May 12, 1988, the adopted ordinance was published in the Albia Union Republican.

The evidence further shows that the Department of Natural Resources did hold a public hearing in Albia, Iowa on the evening of the 9th of May, 1988, and that on the 13th of May, 1988, the Department of Natural Resources approved the landfill permit for Star Coal. Since the provisions of the landfill permit issued by the

Department of Natural Resources are subject to the restrictions of local zoning ordinances, Star Coal was prohibited from proceeding with its plans to open a landfill operation.

Thereafter, on July 22, 1988, Star Coal made application for the rezoning of its property with the Monroe County Zoning Administrator. Star Coal requested that their property be rezoned to allow property to be utilized for both coal mining and sanitary waste disposal. Thereafter, the Administrator presented the Star Coal petition to the Monroe County Zoning Commission and the Commission recommended to the Monroe County Board of Supervisors that Star Coal's application for rezoning should be disallowed.

On September 26, 1988, the Monroe County Board of Supervisors took final action denying Star Coal's request for the rezoning of their property. Thereafter, Star Coal filed herein a petition for writ of certiorari and declaratory relief on October 25, 1988 which is designated as CL 72-1088.

Plaintiff Jim Huyser testifed [sic] at trial that he made a determination in 1986 that it was necessary to attempt to combine a landfill operation with the coal mining operation of Star Coal. He testified that because of fluctuating coal prices it was not economically feasible to continue to rely on revenue from coal mining alone. He testified that the process of obtaining a landfill permit from the Department of Natural Resources was a long, involved, and expensive process. He testified that Star Coal was required to expend in excess of a hundred-

thousand dollars to process the landfill application before the Department of Natural Resources.

The fighting issue in this case involves an interpretation of Section 358A.5 of the Iowa Code that provides, in part, that:

> "The regulation shall be made in accordance with a *comprehensive plan* . . . " (Emphasis added.)

There is no dispute in the record that Monroe County did not adopt a single formal document designated as a "comprehensive plan." Al Heuton contends that it is not necessary to have such a formal document so long as the zoning commission considers various documents and information prior to the adoption of the zoning ordinance. He testified that in his work in preparing the zoning ordinances that he went through previously prepared documents, aerial photographs, the Regional Plan for the Preservation, Development and Management of Area XV prepared in 1977, the 1982 land use inventory of Monroe County and that he studied population changes in the County. He further testified that he made a windshield inventory of the County by driving throughout the County and looking at various land uses.

Allen Heuton's testimony is refuted by some of the very documents which he claims to have relied upon which have been certified to this Court, specifically:

(a) Certification No. 5, *A Preliminary Report upon the Comprehensive Plan, Albia, Iowa.* This comprehensive plan and zoning ordinance was drafted in 1964.

(i) The Albia Comprehensive Plan has a zoning map outlining the particular zoning within the city, and also has a future land use map which establishes the plan which Albia envisions for future growth and development within the City of Albia, Iowa. The Albia Comprehensive Plan is attached to the Albia Zoning Ordinance, and the Albia Comprehensive Plan is approximately twice as along [sic] as the Albia Zoning Ordinance. (ii) Page one of the Albia Comprehensive Plan establishes that the Comprehensive Plan was developed after many months of study and states that the plan may be subject to revision after further study and review by officials and the citizenry of the City of Albia. (iii) Page 40, of the Albia Comprehensive Plan, establishes the role that the Comprehensive Plan, plays in coordinating and guiding future public and private development within the City of Albia.

(b) Certification No. 10, *Regional Plan for the Preservation,*

Development and Management of Area XV (1977). (i) The Regional Plan points out that it should not be considered to be a comprehensive plan. (ii) The Regional Plan emphasizes the need for developing a comprehensive plan. (iii) Emphasis is placed upon the role of a written comprehensive land use plan to aid developers and investors to find sites and develop land in an efficient manner. (iv) It also emphasizes the importance of a comprehensive plan which allows elected officials to

analyze the overall efficiency of existing land use trends.

(c) Certification No. 7, the *Rathbun Regional Planning Commission Program for Housing, Land Use Recreation and Open Space*. Certification No. 7 points out on page 2, that mines do exist in Monroe County and that there is the potential for using these mines for landfills.

Gary Pryor, who is currently the Director of Planning for Polk County, Iowa, testified as an expert witness for the Plaintiffs. Mr. Pryor has worked as a professional planner for over twenty-five years. Like Allen Heuton, he was formerly employed by a Regional Planning Commission and has prepared comprehensive plans and zoning ordinances for communities as small as Alleman, Iowa and as large as Polk County, Iowa. Mr. Pryor stated that the size of the community does not dictate whether a comprehensive plan is necessary. He testified that a comprehensive plan is always necessary prior to the enactment of zoning regulations for any city or county.

Mr. Pryor testified that he reviewed all of the materials provided by the Defendants in their Certification to the Court, and that he worked with Chapter 358A of the Code in his job as Director of Planning for Polk County, Iowa. Mr. Pryor expressed his professional opinion that Monroe County failed to comply with Chapter 358A, Code of Iowa, (1987), by failing to develop a comprehensive plan prior to the enactment of zoning regulations in Monroe County, Iowa Mr. Pryor testified that Allen Heuton's efforts fall far short of even minimal professional planning standards.

Allen Heuton contended that the comprehensive plan exists as long as the planner considers certain aspects of the County at the time the zoning ordinance is drafted. Mr. Pryor disputed this testimony and pointed out that Monroe County never adopted by resolution a document, or series of documents, as their comprehensive plan. He contended that there has to be something for owners, developers and, most importantly, present and future elected officials to have to refer to to [sic] allow them to make a reasoned decision about future growth and development within the County. As pointed out above, the documents certified to the Court which Allen Heuton relied upon confirm Mr. Pryor's opinion. Also, Plaintiff's Exhibit No. 1, *The Planning and Zoning Handbook*, refutes the arguments made by Heuton. At page 8 of the *Handbook*, it states a comprehensive plan is the result of considerable study; must be adopted; and serves as a guide for many public decisions. At page 13 of the *Handbook*, the importance of citizen involvement is emphasized. At page 10 of the *Handbook*, it states the comprehensive plan should be unique. At page 14, the *Handbook* emphasizes that zoning without a comprehensive plan is development programming in reverse.

Chairman Myers and Supervisor Sinclair testified that none of the documents submitted in their Return of Writ were ever adopted by resolution of the Board of Supervisors and these documents were never identified as a part of a Comprehensive Plan, never maintained together, or identified so that they could be reviewed by anyone. Certifications 3 through 10, of the Defendants' Certification to the Court are not even the property of Monroe County, but are the property of the Area XV

Regional Planning Commission and are maintained in Allen Heuton's library in Ottumwa, Iowa. The documents in question are on loan to Monroe County and at the conclusion of the hearing will be returned to Allen Heuton's library.

Pryor further expressed his expert opinion that the 53 independent documents referred to by Heuton as what he believes are a Comprehensive Plan do not constitute a comprehensive plan. He testified that they are not integrated and none have been adopted as a comprehensive plan by resolution of the Board of Supervisors of Monroe County.

Pryor further testified that from his experience that the time frame within which a comprehensive plan can be developed would be a period of time of at least six months. He further testified that to develop the proper zoning ordinance based upon the comprehensive plan that had been developed would require a time frame of approximately three months.

The Court had the opportunity to observe both Allen Heuton and Gary Pryor give testimony in this case. The opinions of Heuton and Pryor as to whether the documents certified to the Court constitute a comprehensive plan are in direct conflict. With regard to this conflict, I credit the testimony of Gary Pryor and I do not credit the testimony of Allen Heuton. I have considered the fact that Gary Pryor has a great deal more experience and I was impressed in the forthright manner in which he testified on all issues. The Court notes that Allen Heuton testified that this project was the first comprehensive plan on which he worked in the State of Iowa.

The Court finds no justification for Defendants' argument that they have complied with Chapter 358A, Code of Iowa (1987), in that the testimony of Allen Heuton, the Defendant's own expert, was inconsistent with the materials which he claims to have relied upon and certified to the Court under the writ of certiorari. There is no comprehensive plan, nor are there a body of documents adopted by the Board of Supervisors by resolution which would put future board members and future land owners and developers within Monroe County on notice of any long-term plan for growth and development within Monroe County, Iowa.

The Court finds that there was no evidence submitted that there was planning specifically associated with the establishment of this ordinance. The only written materials that have been submitted by the Defendants do not specifically relate to the zoning ordinance. Obviously, Allen Heuton will not be present before the Monroe County Board of Supervisors when future land use issues come before the Board. Allen Heuton will not be available when land owners and developers attempt to make decisions for growth and development within Monroe County, Iowa.

The Court further finds that the Defendants did not adopt their zoning regulations in accordance with a "comprehensive plan" as contemplated by Section 358A.5 of the Iowa Code.

The Court further finds that the Defendants lacked jurisdiction to enact the zoning ordinance because of their failure to comply with the provisions of Section 358A of the Code of Iowa, and that, therefore, the Plaintiffs are

entitled to have judgment entered declaring the enactment of the zoning ordinance in Monroe County to be null, void and of no force or effect.

From the foregoing findings of fact, the Court reaches the following

CONCLUSIONS OF LAW

The Defendants contend that the case of *Montgomery v. Bremer County Board of Supervisors,* 299 N.W.2d 687, establishes precedent precluding the need for a written comprehensive plan. The Defendants contend that under *Montgomery* that it was enough to consider problems within the County, including the needs of the public, changing conditions and the similarity of other land in the same area. They contend that if this was done, then the land was zoned in accordance with a comprehensive plan.

The Court concludes that a reading of *Montgomery v. Bremer County Boarad* [sic] *of Supervisors,* does not support the Defendants' position and that there are no Iowa cases which address the failure of a county to have a comprehensive plan upon the imposition of first-time county-wide zoning. Iowa caseshave [sic] dealt only with the entirely separate issue of rezoning real property already zoned in accordance with a comprehensive plan.

In *Montgomery,* certain Bremer County property owners requested that the Bremer County Board of Supervisors rezone certain real property within the county from an A-1 Agricultural District to M-1 Industrial District, to allow for the industrial development of a

proposal submitted by Geo. A. Hormel & Company for the development of a hog-slaughtering plant. The adjoining landowners that would be affected by the hog-slaughtering operations brought certiorari action in district court to review the actions of the board of supervisors. The trial court ruled in favor of the board of supervisors. The trial court ruled in favor of the Bremer County Board of Supervisorse [sic] and the plaintiffs' appealed, raising a number of issues to be considered by the Iowa Supreme Court. The issue of importance to the present case is whether the rezoning was enacted in accordance with the comprehensive plan.

There is dicta in the *Montgomery* case which states as follows:

> "If the board gave full consideration to the problem presented, including the needs of the public, changing conditions, and the similarity of other land in the same area, then it has zoned in accordance with a comprehensive plan."

The Court concludes that the *Montgomery* case is entirely distinguishable from the instant case. In that case, Bremer County was rezoning a small parcel of land, and they were not enacting county-wide zoning. At the time that they enacted county-wide zoning, they had a comprehensive plan. In fact, the Bremer County Comprehensive Plan did address the importance of the type of development contemplated by Geo. A. Hormel & Company to the Bremer County economy. *Montgomery*, at 695. It was the Bremer County Comprehensive Plan that outlined the need for a "balancing out" of agricultural and nonagricultural employment in Bremer County, and it

was the *Plan* that recognized that the processing of commodities was a "keystone" of the Bremer County economy. The Court determined that the zoning change that Bremer County was asked to make was indeed in keeping with their comprehensive plan. Read in its entirety, *Montgomery* establishes how important a comprehensive plan is to the future developers and to future boards of supervisors. It is a classic example of the importance of comprehensive plans in light of requests for rezoning or requests for future development within the county. It simply does not stand for the proposition that written comprehensive plans are unnecessary.

Also, in analyzing the dicta in *Montgomery* upon which the Defendants rely, the Court notes that the opinion stated with Board must give full consideration to the problems presented. The evidence in this case shows that Allen Heuton never consulted with the public, the Board of Supervisors, or the Zoning Commission prior to the development of his initial draft of the Zoning Ordinance. It was only the Zoning Ordinance which the Zoning Commission reviewed and made recommendations upon. It is clear from the dicta in *Montgomery* that it was the "Board" that needed to consider these problems, not just the expert employed by the Board.

Although no Iowa cases directly address the need for a comprehensive plan upon the initiation of county-wide zoning, there are at least two Iowa Attorney General's opinions which address this issue. Kenneth C. Hinke, Jr., then Director of the Division of Municipal Affairs, Office for Planning and Programming, requested an opinion defining the phrase "comprehensive plan," and also asked if a county contemplating the enactment of county-

wide zoning was also required to develop a comprehensive plan. First, the Iowa Attorney General's opinion defined a "comprehensive plan" as:

> "A general regulation or ordinance stating the policy to obtain a uniform result according to the present and potential uses of property within a district considering the individual parcel's relationship to the community as a whole."

Under this analysis, it is clear that the Defendants failed to adopt by ordinance, or even by resolution, any uniform policy concerning future potential uses of the property within Monroe County.

Second, the Attorney General opined that a county desiring to establish county-wide zoning must develop a comprehensive plan. The opinion also states that a comprehensive plan provided:

> "a method of assuring that the general good of all of the county would be reflected in the various zoning districts thus created." 1972, Opinion of Attorney General No. 72-7-12.

In 1983, in response to a request by Mary E. Richards, Story County Attorney, the Iowa Attorney General's office issued an opinion that a county could not exercise zoning authority without complying with the provisions of Section 358A, Code of Iowa. The opinion also stated:

> "Home rule authority does not extend so far as to allow the county to ignore Chapter 358A when exercising zoning authority, and it does not permit the county to adopt its own comprehensive scheme for exercising zoning authority." 1983, Opinion of Attorney General No. 83-5-1.

This opinion makes it clear that a county must comply with Chapter 358A and cannot make their own decisions about compliance, and they must rely on sound planning procedures.

The Defendants have failed to develop a comprehensive plan based upon their reliance upon their expert who relied upon the case of *Montgomery v. Board of Supervisors.* However, this case does not address the real issue in this controversy. That is, may a county impose zoning restrictions without developing a comprehensive plan. The Attorney General's opinions are not binding upon this Court, but the foregoing opinions better address the real issues in this case concerning the definition of a comprehensive plan, when a comprehensive plan is needed and the obligation of counties to comply with Chapter 358A, than any other case decided by the Iowa courts. For this reason, the Court has considered the Attorney General's opinions in determining that a comprehensive plan is needed prior to the initial enactment of county-wide zoning. See *Albia Publishing Company v. Klobnak,* 434 N.W.2d 636, 639 (Iowa, 1989).

As indicated above, the Court notes that Section 358A.5 states, in part, that "regulations shall be made in accordance with a comprehensive plan . . . " The Court also notes that Section 4.1(36)(b) provides that "the word 'shall' imposes a duty."

Under legislative mandate, Monroe County had a duty to develop a comprehensive plan prior to the development of zoning regulations. The Defendants cannot

support their argument that a comprehensive plan existed, or that a written comprehensive plan was unnecessary.

The failure to have a comprehensive plan that the Monroe County Zoning Commission could follow, in determining the merits of the zoning regulations embodied in the proposed Zoning Ordinance made it impossible for the Zoning Commission and the Board of Supervisors to properly analyze the zoning regulations. The Court therefore concludes that the Monroe County Board of Supervisors exceeded their jurisdiction and authority in adopting the Zoning Ordinance without previously adopting a comprehensive plan.

From the foregoing findings of fact and conclusions of law, the Court enters the following

RULING AND ORDER

1. The Court has jurisdiction of the subject matter and of the parties herein.

2. The Court is charged with reviewing Chapter 358A, Code of Iowa (1987) to determine whether the Defendants complied with said Chapter in exercising their zoning authority. The Court has considered the evidence offeredby [sic] both parties, the attendant circumstances, and the objects the Defendants were striving to attain.

3. The Court finds that the Defendants did not comply with Chapter 358A of the Code of Iowa in that they failed to develop a Comprehensive Plan prior to the enactment of a Zoning Ordinance. This is a violation of

Section 358A.5 of the Code of Iowa, which mandates that all zoning ordinance regulations shall be enacted in accordance with a Comprehensive Plan. Without having previously adopted a Comprehensive Plan, the Board of Supervisors of Monroe County exceeded its jurisdiction and lacked authority for enactment of the zoning ordinance which is the subject matter of this dispute.

4. For all of the reasons stated above, the Defendants have acted illegally and outside of their authority as prescribed under Chapter 358A, Code of Iowa (1987), and the Monroe County Zoning Ordinance is hereby declared to be void and of no effect whatsoever.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiffs' Petition for Writ of Certiorari alleging that the Defendants acted illegally and outside of their authority is sustained.

2. The Monroe County Zoning Ordinance is void and of no legal effect whatsoever based upon a failure to comply with the legislative mandates contained within Chapter 358A, Code of Iowa (1987).

3. Plaintiffs are entitled to proceed on the bifurcated issue of damages in both of the joined cases herein wherein they allege they have sustained damage based upon the illegal and unconstitutional acts taken by the Defendants in this matter.

4. All costs in this action are assessed against the Defendants and all attorneys fees shall be the responsibility of each respective party.

Dated this 22nd day of December, 1989.

/s/ James P. Reilly
JUDGE, 8TH JUDICIAL
DISTRICT

Copies to: William J. Lillis &
Daniel L. Manning
Annette Scieszinski

ORDINANCE NO. 6

MONROE COUNTY ZONING ORDINANCE

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SECTION 1: TITLE

This ordinance shall be known and may be cited and referred to as the "Monroe County, Iowa, zoning Ordinance."

SECTION 2: JURISDICTION, SCOPE AND PURPOSE

The jurisdiction of this ordinance shall apply to all the unincorporated area inside the county limit boundaries of Monroe County, Iowa.

Except as may be hereinafter specified, no land, building structure, or premises, hereafter shall be used and no structure may be located, constructed, extended, converted, structurally altered or otherwise developed without full compliance with the terms of the Ordinance. Any structure or use lawfully existing at the effective date of this Ordinance but not in conformity with the regulations of the appropriate zoning district may be continued, subject to the regulations of Section 9.

The purpose of this Ordinance is to promote public health, safety, comfort and general welfare; to conserve and protect property values; to encourage the most appropriate use of land through orderly development to conserve and protect our natural resources; to facilitate

adequate but economical provisions for public improvements; and to protect private property rights, all in accordance with and as permitted by the provisions of Chapter 358A, Code of Iowa (1987).

SECTION 3. SPECIAL EXEMPTIONS

1. No regulation or restriction adopted under the provisions of this Ordinance shall be construed to apply to land, farm houses, farm barns, farm outbuildings or other buildings, structures, or erections which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used.

   a. Agricultural buildings and land uses are not exempt from complying with any Federal, State or Local regulations concerning developing, depositing, or excavating in or on any flood plains.

   b. It shall be the responsibility of any person or group claiming that certain property is entitled to exemption on the basis of this Section to demonstrate that the property and buildings are primarily adapted and used for agricultural purposes.

2. A special exemption applies to utility companies that are regulated by the Iowa Commerce Commission. While the Zoning Ordinance cannot regulate the distributing equipment and structures of utility companies, Monroe County encourages such companies to comply voluntarily with the

standards and the land use policies of Monroe County. This exemption does not apply to cable television companies.

SECTION 4: INTERPRETATION OF STANDARDS

In the interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements. Where this Ordinance imposes a greater restriction than is imposed or required by other provisions of law or by other rules, regulations, or restrictive covenants, the provisions of this Ordinance shall control. Where the provisions of any statute, other ordinance or regulation impose greater restrictions than this Ordinance, such restrictions shall apply.

SECTION 5: DEFINITIONS

For the purpose of this Ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural; and the plural, the singular. The word "shall" is mandatory, the word "may" is permissive; the word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual; the words "used" or "occupied" include the words intended, designed, or arranged to be used or occupied.

ACCESSORY USE OR STRUCTURE: A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

ADMINISTRATIVE OFFICER: The individual designated by the Board of Supervisors and this Ordinance who is responsible for the enforcement of the regulations imposed by the Zoning Ordinance. This person may also be referred to as the Zoning Administrator.

ADULT BOOK STORE, ADULT THEATER: An establishment having as a substantial or significant portion of its stock in trade, books, magazines, periodicals, or the display of motion pictures which are distinguished or characterized by their emphasis on matter depicting or describing or relating to "specific sexual activities" or "special anatomical areas" (as defined below), or an establishment with a segment or section devoted to the sale or display of such material.

AGRICULTURE: The use of not less than 1 (one) acre of land for agricultural purposes including farming, dairying, pasturage, agriculture, horticulture, floriculture, vitaculture, fish farm, and animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing of the produce; provided, however, that the operation of such accessory uses shall be secondary to that of normal agricultural activities and provided further that the above uses shall not include the commercial feeding of garbage or offal to swine.

AIRPORT: The Albia Municipal Airport.

AIRPORT ELEVATION: The highest point of an airport's usable landing area measured in feet above mean sea level, which elevation is established to be 963 feet.

AIRPORT HAZARD: Any structure or tree or use of land which would exceed the Federal obstruction standards as contained in fourteen Code of Federal Regulations Sections seventy-seven point twenty-one (77.21), seventy-seven point twenty-three (77.23) and seventy-seven point twenty-five (77.25) as revised March 4, 1972, and which obstruct the airspace required for the flight of aircraft and landing or takeoff at an airport or is otherwise hazardous to such landing or taking off of aircraft.

AIRPORT PRIMARY SURFACE: A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. The width of the primary surface of a runway will be that width prescribed in Part 77 of the Federal Aviation Regulations (FAR) for the most precise approach existing or planned for either end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

AIRSPACE HEIGHT: For the purpose determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

ALLEY OR LANE: A public or private way affording generally secondary means of access to abutting property and not intended for general traffic circulation.

APARTMENT HOUSE: See Dwelling, Multiple.

BASEMENT: A story having part, but not more than one-half (1/2), of its height below grade. A basement is counted as a story for the purpose of height regulations.

BILLBOARD: "Billboard" as used in this Ordinance, shall include all, structures regardless of the material used in the construction of the same, that are erected, maintained or used for public display of posters, painted signs, wall signs, whether the structure be placed on the wall or painted on the wall itself, pictures or other pictorial reading matter which advertise a business or attraction which is not carried on or manufactured in or upon the premises upon which said signs or billboards are located.

BOARDING OR LODGING HOUSE: A building other than a hotel or motel, occupied as a single housekeeping unit, where lodging or meals are provided for three (3) or more, but not exceeding eight (8), persons for compensation, but not for public or transient use.

BUILDING: Any structure having a roof supported by walls or by columns designed or intended for enclosure, shelter or housing of persons, animals or chattels. When any portion thereof is separated by party walls without windows, doors, or other opening, each portion so separated shall be deemed a separate building, except residence dwellings.

BUILDING, HEIGHT OF: The vertical distance from the average natural grade to the highest point of coping of a flat roof, or to the deck line of a mansard roof, or to the height of the highest gable of a pitch or hip roof.

BUILDING OFFICIAL: The agent so designated by the Board of Supervisors.

BULK STATION: Distributing stations commonly known as bulk or tank stations used for the storage and

distribution of flammable liquids or liquefied petroleum products where the aggregate capacity of all storage tanks is more than twelve thousand (12,000) gallons.

CARPORT: A roofed structure providing space for the parking of motor vehicles and enclosed on not more than two sides. For the purpose of this Ordinance, a carport attached to a principal building shall be considered part of the principal building and subject to all yard requirements herein.

CELLAR: That portion of a building having more than one-half (1/2) of its height below grade. A cellar is not included in computing the number of stories for the purpose of height measurement.

COMMERCIAL FEEDLOT/CONFINEMENT OPERATION: The feeding, farrowing and raising of feeder and dairy cattle, swine, sheep, and poultry in a confined area where grazing is not possible, and where at least half of the livestock and poultry feed is not grown on the premises. To be defined as "commercial," such operation must be owned or controlled by a partnership or corporation not living on the site. This definition is not meant to include family farms which have incorporated for business purposes.

COMMON SEWER SYSTEM: A central sewer collecting system available to each platted lot and discharging into a treatment plant, the construction and location of which is approved by the appropriate County and/or State agency.

COMMON WATER SYSTEM: A central water supply system available to each platted lot for one single source

approved by the appropriate County and/or State agency.

CONTROL ZONE: Airspace extending upward from the surface of the earth which may include one or more airports and is normally a circular area of 5 statute miles in radius, with extensions where necessary to include instrument approach and departure paths.

DEVELOPMENT: Any man-made change to alter the existing land use of a parcel of land including, but not limited to: buildings, structures, mining, dredging, filling, grading, paving, excavating, or drilling operations.

DISTRICT: An area or areas for which the district regulations governing the use of buildings, and land or lot area and height of buildings are uniform.

DWELLING: Any building or portion thereof which is designed or used exclusively for residential purposes but not including a tent, cabin, travel trailer.

DWELLING, SINGLE-FAMILY: A detached residence designed for or occupied by one family only.

DWELLING, TWO-FAMILY: A residence designed for or occupied by two (2) families only, with separate housekeeping and cooking facilities for each.

DWELLING, MULTIPLE: A residence designed for or occupied by three (3) or more families, with separate housekeeping and cooking facilities for each.

DWELLING, CONDOMINIUM: A multiple dwelling as defined herein whereby the fee title to each dwelling unit is held independently of the others; regulated by Chapter 499B, Code of Iowa, 1987.

DWELLING, ROW: Any one of three or more attached dwellings in a continuous row, each such dwelling designed and erected as a unit on a separate lot and separated from one another by an approved wall or walls. Also referred to as a "townhouse."

DWELLING, UNIT: A room or group of rooms which are arranged, designed or used as living quarters for the occupancy of one family containing bathroom and/or kitchen facilities.

EASEMENT: A grant by a property owner for the use of a strip of land by the public or any person for any specific purpose or purposes.

FAMILY: One or more persons occupying a single dwelling unit. No such family shall contain over four (4) persons unless a majority of the members are related by blood, marriage or adoption (including foster children).

FAMILY HOME: A community-based residential home which is licensed as a residential care facility under chapter 135C or as a child foster care facility under chapter 237 to provide room and board, personal care, habilitation services, and supervision in a family environment exclusively for not more than eight developmentally disabled persons and any necessary support personnel. However, family home does not mean an individual foster family home licensed under chapter 237.

FARM: An area comprising at least one (1) acre of land which is used for agricultural purposes and the growing and production of all agricultural products thereon, and their storage on the area, or for the raising thereon of poultry or livestock.

FARMSTEAD: The farm house, associated farm buildings, and adjacent service areas of a farm.

FEEDLOT: A lot, yard, corral, or other area in which livestock are confined, primarily for the purposes of feeding and growth prior to slaughter or the sale of products derived from such animals. The term does not include areas which are used for the raising of crops or other vegetation, and upon which livestock are allowed to graze or feed.

FLOOD: A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid runoff of surface waters from any source.

FLOOD PLAIN: Any land area susceptible to being inundated by water as a result of a flood.

FLOOR AREA PATIO: The gross floor area of all buildings on a lot divided by the lot area on which the building or buildings are located.

FRONTAGE: All the property abutting upon one side of a street measured along the right-of-way line.

GARAGE, PRIVATE: An enclosed structure intended for the parking of the private motor vehicles of the families resident upon the premises.

GARAGE, PUBLIC: Any building or premises except those used as private or storage garages, used for equipping, refueling, servicing, repairing, hiring, selling, or storing motor-driven vehicles possessing current registration.

GARAGE, STORAGE: Any building or premises used for housing only of motor-driven vehicles pursuant to previous arrangements and not to transients, and at which automobile fuels and oils are not sold, and motor-driven vehicles are not equipped, repaired, hired, or sold. All vehicles so housed to possess current registration.

GASOLINE FILLING STATION: Any building or premises used for the retail sale of liquified petroleum products for the propulsion of motor vehicles and may include such products as kerosene, fuel oil, packaged naphtha, lubricants, tires, batteries, antifreeze, motor vehicles accessories, and other items customarily associated with the sale of such products; for the rendering of services and making of adjustments and replacements to motor vehicles, and the washing, waxing and polishing of motor vehicles, as incidental to other services rendered; the making of repairs to motor vehicles except those of a major type. Repairs of a major type are defined to be spray painting, body, fender, or complete recapping or retreading of tires.

GRADE: The average level of the finished surface of the ground adjacent to the exterior walls of the building.

HOME OCCUPATION: A secondary use carried on entirely within the residence where there is no evidence of such occupation being conducted on the premises by virtue of displays, excessive noise, odors, or electrical disturbances. The business shall be such that customer parking is provided inconspicuously on the premises. Only one (1) sign is permitted under the following requirements:

a. Not larger than five (5) square feet; and

b. Placed flat against any one side of residence; or

c. Posted within two (2) feet and parallel with residence or;

d. If residence is located behind the building line, the sign must be located no closer than fifty (50) feet to the road right-of-way and must be parallel with the residence; and

e. is not illuminated.

No more than one (1) non-resident assistant shall be employed and not more than one-half (1/2) the total floor area shall be devoted to such use.

HOME INDUSTRY: A secondary use of a light industrial nature carried on entirely within the residence or accessory building as a secondary occupation which complies with restrictions of "Home Occupation."

HOTEL: A building in which lodging is provided and offered to the public for compensation, and which is open to transient guests, in contradistinction to a boarding house or lodging house.

INSTRUMENT RUNWAY: A runway having an existing instrument approach procedure utilizing air navigation facilities or area type navigation equipment, for which an instrument approach procedure has been approved or planned.

JUNK OR SALVAGE: Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, appliances, furniture, equipment, building demolition materials or structural steel materials. This definition

shall also include junked, dismantled, or wrecked motor vehicles, or parts of motor vehicles, and iron, steel or other old or scrap ferrous or nonferrous material.

JUNK OR SALVAGE YARD: Any area where junk or salvage is bought, sold, exchanged, baled or packed, disassembled, kept, stored or handled. This definition shall also include auto or other vehicle or machinery wrecking or dismantling activities. This definition shall not include the processing of used, discarded or salvaged materials as part of a manufacturing operation located on the same property, and contractors' storage yards.

The presence on any lot, parcel or tract of land of three (3) or more wrecked, scrapped, ruined, dismantled or inoperative motor vehicles, including implements of husbandry not a part of a farming operation, shall constitute prima facie evidence of a junk or salvage yard. This shall not include motor vehicles licensed for the current year as provided by law; and/or up to five (5) motor vehicles legally placed in storage; and/or more than five (5) legally stored vehicles if kept within a completely enclosed building or totally screened from view.

KENNEL: Any lot or premises used for the sale, boarding, or breeding of dogs, cats, or other household pets. Kennel shall also mean the keeping of five (5) or more dogs, cats, or other household pets of the mammal group over the age of six (6) months.

LIVESTOCK: Cattle, horses, sheep, swine and poultry. Any other animal or fowl which are being produced primarily for use as food or food products for human consumption.

LOT: For the purposes of this Ordinance, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area and to provide such yards and other open space as are herein required. Such lot shall have frontage on a public road or street and may consist of: (a) a single lot of record; (b) a portion of a lot of record; (c) a combination of complete lots of record; and (d) a parcel of land described by metes and bounds; provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this Ordinance.

LOT AREA: Total horizontal area within lot lines.

LOT, CORNER: Lots conforming to the following specified conditions shall be considered as corner lots for the purpose of this Ordinance:

(a) A lot fronting on two (2) intersecting streets which form an interior angle of one hundred thirty-five (135) degrees, or less, and which lot has a frontage of not less than twenty-five (25) feet on such streets.

(b) A lot located at the angle in a street where the interior angle formed by the intersection of the street lines is one hundred thirty-five (135) degrees, or less, and which lot has a frontage of not less than twenty-five (25) feet on each leg of such angle.

LOT, DEPTH OF: The mean horizontal distance between the front and rear lot lines.

LOT, INTERIOR: A lot other than a corner lot.

LOT LINE: Property line bounding a lot, exclusive of public easements for street or road purposes.

LOT LINE, FRONT: The line separating the lot from the street on which it fronts.

LOT LINE, REAR: The lot line opposite and most distant from the front lot line.

LOT LINE, SIDE: Any lot line other than a front or rear lot line.

LOT, THROUGH: A lot having frontage on two (2) non-intersecting streets, as distinguished from a corner lot.

LOT, WIDTH: The mean horizontal distance between the side lot lines.

LOT OF RECORD: A lot which is part of a subdivision recorded in the office of the County Recorder of Monroe County, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

LOW QUALITY AGRICULTURAL LAND: All land in Capability Class IV-VII and those soils not identified as prime in the soil conservation service technical guide entitled "Iowa Soil Map Units That Qualify as Prime Farm Land." April 1984 and which boundaries are identified in the Monroe County Soil Survey issued September 1984.

MANUFACTURED HOME: A factory-built structure, which is manufactured or constructed under the authority of 42 United States Code Sec. 5403 and is to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or

axles. A mobile home is not a manufactured home, except as hereinafter provided.

MINIMUM DESCENT ALTITUDE: The lowest altitude, expressed in feet above mean sea level, to which descent is authorized on final approach to during circle-to-land maneuvering in execution of a standard instrument approach procedure, where no electronic glide slope is provided.

MINIMUM ENROUTE ALTITUDE: The altitude in effect between radio fixes which assures acceptable navigational signal coverage and meets obstruction clearance requirements between those fixes.

MINIMUM OBSTRUCTION CLEARANCE ALTITUDE: The specified altitude in effect between radio fixes on vor airways, off-airway routes, or route segments which meets obstruction clearance requirements for the entire route segment and which assures acceptable navigational signal coverage only within 22 miles of a VOR.

MINING: The extraction of sand, gravel, rock, soil, coal, or other material from the land in the amount of 1,000 cubic yards or more and the removing thereof from the site including coal processing. The only exclusion from this definition shall be removal of materials associated with the construction of a building.

MOBILE HOME: Any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as well permit the vehicles to be used as a place for human habitation by one or more persons; but

shall also include any such vehicle with motive power not registered as a motor vehicle in Iowa. A mobil home is not a manufactured home unless it has been legally converted, prior to July 1, 1984, to real property and taxed as a site built dwelling as provided in Section 135D.26, Code of Iowa.

MOBILE HOME PARK: Any site, lot, or tract of land upon which two (2) or more occupied mobile homes are harbored, either free of charge, or for revenue purposes, and as regulated by Chapter 135D, Iowa Code.

MOTEL OR TOURIST HOME: A permanent building, or group of buildings, designed or arranged primarily for temporary occupancy as a dwelling for transient guests and arranged to provide space for parking vehicles used by the traveling public. Such building, or group of buildings, may include quarters for the use of operating personnel.

NON-CONFORMING USE: Any lawful use, whether of a building or other structure or a tract of land, which does not conform to the applicable use regulations for the district in which it is located, either at the effective date of this Ordinance or as a result of a subsequent amendment thereto.

NURSING HOME: A home for aged, chronically ill or incurable persons in which three (3) or more persons not of the immediate family are received, kept and provided with food, or shelter and care for compensation.

OVERLAY DISTRICT: A district which acts in conjunction with the underlying zoning district or districts. Development within the overlay district must conform to

the requirements of both zones or the more restrictive of the two (2).

PARKING LOT: A parcel of land devoted to unenclosed parking space.

PARKING SPACE: An area of not less than two hundred (200) square feet plus necessary maneuvering space for the parking of a motor vehicle.

PERMANENT FOUNDATION: A structural component of masonry, steel or wood, or a combination thereof, that extends and is placed on footings situated below the frost line and to which a structure is attached and supported. Wood, when used as, or a part of, the foundation structure and placed below grade shall be so treated as to resist deterioration or decay. This permanent foundation shall be in the form of a solid wall located under the exterior walls of the supported structure or in the form of pilings of sufficient number and so spaced as to support and secure the structure. In all installations, the dwelling shall be attached to the permanent foundation in such a manner as to prevent lateral movement, settling or heaving. All buildings, identified by the terms of this Ordinance as dwellings, shall be placed on a permanent foundation.

PORCH UNENCLOSED: A roofed projection which has not more than fifty (50) percent of each outside wall area enclosed by a building or siding material other than meshed screens.

PRIME FARMLANDS: All land in capability Class I, most of Class II, and Class III, that has an adequate water management system, and as identified in the soil

conservation service technical guide entitled "Iowa Soil Map Units That Qualify as Prime Farm Land," April 1984 and which boundaries are identified in the Monroe County soil survey issued September 1984.

PRINCIPAL USE OR STRUCTURE: The predominant use of land or structures as distinguished from an accessory use.

RIGHT-OF-WAY: The land area the right to possession of which is secured or reserved by the contracting authority for road purposes.

RUNWAY: A defined area on an airport prepared for landing and takeoff of aircraft along its length.

SANITARY LANDFILL: Land utilized for disposing of solid wastes in accordance with the rules and regulations of the Department of Environmental Quality.

SIGN: any word(s), lettering, figures, emblems, pictures, trade names, or trade marks used by an individual, firm, or association, a corporation, a professional, a business, a service, a community, a church, or school and visible from any public street or right-of-way and designed to attract attention for commercial or non-profit purposes. This is not to be construed to include directional signs erected or required by governmental bodies, legal notices, signs bearing only property numbers or names of occupants of premises.

SPECIFIED SEXUAL ACTIVITIES: As used in this Ordinance, defined as; (a) human genitals in a state of sexual stimulation or arousal; (b) acts of human masturbation, sexual intercourse or sodomy; (c) fondling or

other erotic touching of human genitals, pubic region, buttocks, or female breasts.

SPECIFIED ANATOMICAL AREAS: As used in this Ordinance, defined as: (a) less than completely and opaquely covered (1.) human genitals, pubic region; (2.) buttocks; and (3.) female breasts below a point immediately above the top of the areola; and (b) human male genitals in a discernible turgid state, even if completely and opaquely covered.

STABLE, PRIVATE: A building or structure used or intended to be used for housing horses belonging to the owner of the property only for non-commercial purposes.

STABLE, PUBLIC AND RIDING ACADEMY: A building or structure used or intended to be used for the housing only of horses on a fee basis. Riding instruction may be given in connection with a public stable or riding academy.

STORY: that portion of a building, other than a basement or cellar, included between the surface of any floor and the surface of the floor next above it or, if there be no floor above it, the space between the floor and the ceiling next above it.

STORY, HALF: A space under a sloping roof which has a line of intersection of roof decking and wall face not more than four (4) feet above the top floor level.

STREET LINE: A dividing line between a lot, tract or parcel of land and a contiguous street.

STREET, ROAD, DRIVE, OR ENTRANCE (PRIVATE): All property intended for use by vehicular traffic; but not dedicated to the public nor controlled and maintained by a political subdivision.

STREET, ROAD, DRIVE OR ENTRANCE (PUBLIC): All property intended for use by vehicular traffic which has been dedicated to the public or deeded to a political subdivision.

STRUCTURAL ALTERATIONS: Any replacement or changes in the type of construction or in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, beyond ordinary repairs or maintenance.

STRUCTURE: Anything constructed or erected on the ground or attached to the ground, or which requires attachment to something having a permanent location on the ground, including, but not limited to buildings, factories, sheds, cabins, factory-built homes, storage tanks, and other similar uses.

SUBDIVISION: The dividing of any parcel of land into three (3) or more parcels.

SUBSTANTIAL IMPROVEMENT: Any improvement to a structure which satisfies either of the following criteria:

1. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (i) before the improvement or repair is started, or (ii) if the structure has been damaged, and is being restored, before the damage occurred. For

the purposes of this definition, "substantial improvement" is considered to occur when the first alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe conditions for the existing use.

2. Any addition which increases the original floor area of a building by 25 percent or more.

TRAVEL TRAILER: A recreational vehicle, with or without motive power; designed as a temporary dwelling, not exceeding eight (8) feet in width and thirty-two (32) feet in length, exclusive of separate towing unit. Such vehicles are customarily and ordinarily used for travel or recreational purposes and not used for permanent habitation.

TRAVEL TRAILER PARK/CAMP: An area licensed and used or offered for use in whole or in part, with or without charge, for the parking of occupied travel trailers, pickup campers, converted buses, motor homes, tent trailers, tents, or similar devices used for temporary, portable housing. Unoccupied mobile homes, travel trailers, and similar devices may be stored in the Park, but only in an area marked for storage. No repair, maintenance, sales, or servicing, or such devices are allowed in the Park.

USE: The purpose of activity for which the land or building thereon is designated, arranged or intended, or for which it is occupied, utilized or maintained.

USE ACCESSORY: A use subordinate to and serving the principal use or structure on the same lot and customarily incidental thereto.

USE CONDITIONAL: A use classified as conditional may be appropriate or desirable in a specified zone, but requires special approval because if not carefully located or designed, it may create special problems such as excessive height, bulk or abnormal traffic congestion.

USE, NON-CONFORMING: Use of land, buildings or structures legally existing at the effective date of this Ordinance which does not comply with all regulations of this Ordinance or any amendments hereto governing the zoning district in which such use is located.

USE, PERMITTED: A public or private use which of itself conforms with the purposes, objectives, requirements, regulations and performance standards of a particular district.

USE, PRINCIPAL: The main use of land or buildings as distinguished from subordinate or accessory uses. A "principal use" may be either permitted or conditional.

VARIANCE: A modification or variation of the provisions of this Ordinance where it is determined that by reason of special and unusual circumstances relating to a specific log, that strict application of the Ordinance would cause an undue or unnecessary hardship, or that strict conformity with the provisions of this Ordinance

would be unreasonable, impractical or unfeasible under the circumstances.

VISUAL RUNWAY: A runway intended solely for the operation of aircraft using visual approach procedures with no straight-in instrument approach procedure and no instrument designation indicated on an FAA approved airport layout plan, or by any planning document submitted to the FAA by competent authority.

YARD: an open space on the same lot with a building unoccupied and unobstructed by any portion of the structure from the ground upward, except as otherwise provided in this Ordinance.

YARD, FRONT: A yard across the full width of the lot extending from the front line of the principal building to the front line of the lot.

YARD, REAR: A yard extending the full width of the lot between the principal building and the rear lot line.

YARD, SIDE: A yard between the principal building and the side line of the lot, and extending from the front yard line to the rear yard line.

ZONING AMENDMENT: A change authorized by the governing body of a change in zoning district classification or the boundaries of a zoning district.

ZONING PERMIT: A lawful permit issued by the zoning Administrator of Monroe County, Iowa, for the erection, reconstruction or alteration of a building or structure or the use of land.

SECTION 6: DISTRICT PROVISIONS

Subd. 1. *Establishment of Districts.* In order to carry out the purpose and intent of this Ordinance, the unincorporated area of Monroe County, Iowa, is hereby divided into the following zoning district classifications:

A-1 Prime Farmland Agricultural District

A-2 Agricultural District

R-1 Single Family Residential District

R-2 Single Family Residential District

RMH Residential Mobile Home District

C-1 Commercial District

C-2 Highway Service Commercial District

I-1 Light Industrial District

I-2 Heavy Industrial District

Airport (Overlay) District

Subd. 2. *Boundaries and Official Map.* With the exception of the airport overlay district, the boundaries of these districts are indicated upon the Official Zoning Map of Monroe County, Iowa, which map is made a part of this Ordinance by reference hereto. The Official Zoning Map and all the notations, references, and other matters shown thereon shall be as much a part of this Ordinance as if the notations, references and other matters set forth by said map were all fully described herein. The Official Zoning Map shall be on file in the office of the Monroe County Planning and Zoning Administrator and shall bear the signature of the Chairperson of the Board of

Supervisors attested by the County Auditor, under the certification that this is the Official Zoning Map of the Zoning Ordinance.

If, in accordance with the provisions of this Ordinance, changes are made in the district boundaries or other matters portrayed on the Official Zoning Map, the resolution number and date of said change shall be recorded by the County Auditor on the Official Zoning Map.

The Board of Supervisors may from time to time adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map, in the event that the Official Zoning Map becomes damaged or destroyed; or for purposes of clarity due to a number of boundary changes, or to correct drafting errors or omissions; provided, however, that any such adoption shall not have the effect of amending the original zoning Ordinance or any subsequent amendment thereof.

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

(a) Boundaries, indicated as approximately following the center lines of streets, highways, alleys, or other public rights-of-way shall be construed to follow such center lines.

(b) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

(c) Boundaries indicated as approximately following section lines, quarter lines, quarter section lines, or quarter- quarter section

lines shall be construed as following such lines.

(d) Boundaries indicated as approximately following corporate limits shall be construed as following corporate limits.

(e) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

(f) Boundaries indicated as approximately following the center lines of rivers, streams, creeks, or other waterways shall be construed to follow such center lines.

(g) Boundaries not capable of being determined in the previous paragraphs shall be as dimensioned on the Official Zoning Map or if not dimensioned shall be determined by the scale shown on the map.

Airport Overlay Map: The boundaries of the airport overlay district shall be the same as shown on the Albia Municipal Airport Height Zoning Map. This map is hereby adopted by reference as the Official Airport Overlay Map. This map shall have the same force and effect as if it were fully set forth and described herein. The map is available for review in the office of the Monroe County Zoning Administrator.

Subd. 3. *General Regulations and Provisions.*

Airborne Aircraft Interference. Notwithstanding any other provisions of this Ordinance; no use may be made of land or water within Monroe County in such a manner as to interfere with the operation of any airborne aircraft. The following special requirements shall apply to all zoning districts:

A. All lights or illumination used in conjunction with street, parking, signs or use of land and structures shall be arranged and operated in such a manner that it is not misleading or dangerous to aircraft operating from the Albia Municipal Airport or in the vicinity thereof.

B. No operations from any use shall produce smoke, glare or other visual hazards within three (3) statute miles of any usable runway of the Albia Municipal Airport.

C. No operations from any use in Monroe County shall produce electronic interference with navigation signals or radio communications between the airport and aircraft.

Buildings on Through Lots. Through lots extending from street to street shall provide the required front yard on both streets.

Conformance Required. Except as may be hereinafter specified, no land, building, structure, or premises shall hereafter be used and no building, or part thereof, or other structure shall be located, erected, reconstructed, extended, enlarged, or altered, except in conformity with the provisions of this Ordinance.

Corner Lots. The front yard regulation shall apply to each street side of corner lots.

Construction in Flood Hazard Areas. No person, firm or corporation shall initiate any development or cause the same to occur in any flood hazard area without first obtaining the necessary permits as required by any Federal, State or local agency. Any permitted construction

shall be in conformance with all Federal and State regulations concerning development in flood hazard areas.

Disincorporation. All territory which may hereafter become part of the unincorporated area of Monroe County, Iowa, which is regulated by this Ordinance, by the disincorporation of any city, or any part thereof, shall automatically be classed and lying and being in the A-1 Agricultural District until such classification shall have been changed by amendment of this Ordinance as provided by law.

Fences and Walls. In any R-1, R-2, and RMH District, on any lot used for residential purposes, fences and walls not exceeding eight (8) feet in height are permitted within the limits of the side and rear yards. A fence or wall not exceeding four and one-half (4 1/2) feet in height is permitted within the limits of the front yard. In the case of retaining walls or supporting embankments, the above requirements shall apply only to that part of the wall above ground surface of the retained embankment. In all other districts, fences and walls are permitted not exceeding eight (8) feet in height within the limits of the yard. In all cases, fences shall be constructed with the best side facing the neighboring land user.

Method of Yard Measurements. The set back of the building for front, rear, and side yards shall in all cases be measured at a right angle from the lot line to the nearest point of the adjacent building wall of the building.

One Principal Building to a Lot. Every building hereafter erected or structurally altered shall be located on a lot, as defined herein, and in no case shall there be

more than one (1) principal building on a residential lot, unless otherwise specified in the Ordinance.

Permits Previously Issued. Nothing herein contained shall require any change in the overall layout, plans, construction, size, or designated use of any building, or part thereof, for which approvals and/or required permits have being granted before the enactment of this Ordinance; the construction of which in conformance with such plans shall have been started prior to the effective date of this Ordinance and completion thereof carried on in a normal manner and not discontinued for reasons other than those beyond the builder's control.

Required Yard Cannot Be Reduced. No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum required by this Ordinance. No part of a yard or other open space, or off-street parking or loading space provided about any building, structure, or use for the purpose of complying with the provisions of this Ordinance shall be included as part of a yard, open space, or off-street parking or loading space required under this Ordinance for another building, structure, or use.

Sewage Disposal. Sewage disposal systems shall be approved by the Monroe County Board of Health and shall be in conformance with all applicable regulations adopted by Monroe County and the State of Iowa.

Street Frontage Required: Except as permitted in Section 6 of this Ordinance, no lot shall contain any building used in whole or in part for residence purposes unless such lot abuts for at least forty (40) feet on at least

one public street, or unless it has an exclusive unobstructed private easement of access or right-of-way at least twenty (20) feet wide to a street; and there shall be not more than one (1) single-family dwelling for such frontage or easement, except that a common easement of access at least fifty (50) feet wide may be provided for two (2) or more such single-family dwellings or for one (1) or more two-family or multiple dwellings.

Subdivision Required. Every owner of any lot or tract of land on the effective date of this Ordinance who shall thereafter subdivide the same into three (3) or more parts, shall have the plat of such subdivision approved by the Board of Supervisors and County Engineer as provided in the Monroe County Subdivision Regulations and recorded in the office of the County Recorder before a zoning permit for any of the lots in such subdivision may be issued by the Zoning Administrator.

Vision Clearance. In all districts, no fence, hedge, wall, sign or other obstruction shall be permitted which obstructs the view of approaching vehicles three and one-half (3 1/2) feet above the traveled portion of a roadway within the area of a triangle formed by the center of the intersection and points one hundred fifty (150) feet from the center of the intersection when measured along the centerlines of the intersecting roads.

Subd. 4. A-1 Prime Farmland Agricultural District

Intent: The A-1 Agricultural District is intended and designed to serve the agricultural community and protect prime agricultural land from encroachment of urban land uses. This district is not intended to be used

for non-farm residential developments, governmental facilities, or commercial businesses.

A. Principal Permitted Uses:

1. Farms and farm house and the usual agricultural buildings or structures.

2. Specialized farms where the breeding and/or raising of other than common farm animals, such as: mink, chinchilla, rabbit and wild game animals is conducted.

3. Specialized horticultural operations, including: truck gardens, orchard and wholesale nurseries.

4. Forest and wildlife preserves.

5. Sod farms.

6. Single family home on platted lots in existing subdivisions and Auditor's plats, as of the adoption date of this Ordinance, or on existing parcels of less than fifteen (15) acres.

7. Public parks.

B. Conditional Uses.

1. Livestock and poultry feedlots and confinement facilities, provided, however, that all feedlot and confinement facilities meet all the wastewater treatment requirements of the Iowa Department of Natural Resources and be approved by the County Board of Supervisors after recommendation of the County Zoning Commission, and obtain the necessary permits where applicable; and further provided that no commercial feedlot or confinement facility shall be located closer

than one (1) mile to any residential district boundary or to the corporate limits of any city or town.

2. Commercial microwave, radio and television towers.

3. Any public building or structure or facility erected and used by any department of the township, county, city or state government, including but not limited to public aircraft landing fields and facilities and sewage treatment facilities.

4. Church or other place or worship, including parish house and Sunday School building.

5. Cemeteries, including mausoleums and crematoriums, provided that any mausoleum or crematory shall be distant at least two hundred (200) feet from any adjacent property and street and highway lines.

6. Temporary facilities for music events, sports events, commercial exhibitions and carnivals.

7. Stables (private) providing that any such structure build [sic] to accommodate horses must be located in the rear yard (if there is also a residence) and at least fifty (50) feet from all property lines.

8. Mining (see Section 11, Subd. 3 for additional requirements).

C. Permitted Accessory Uses.

1. Uses of land or structures customarily incidental and subordinate to one of the permitted uses, unless otherwise excluded.

2. Home occupations.

3. Temporary buildings for use incidental to construction work, which buildings shall be removed upon completion or abandonment of the construction work.

4. Roadside stands for the display or sale of agricultural products raised on the premises, provided such stands shall not exceed four hundred (400) square feet of floor area.

5. Church bulletin boards.

D. Performance Standards.

1. Minimum lot area, lot frontage and yard requirements.

Use	Lot Area	Lot Width	Lot Area Per Family	Front Yard	Side Yard	Rear Yard
Dwelling (farm)	1 acre		1 acre	no requirement		
Dwelling (single family)	1 acre	150'	1 acre	50'	25'	40'
Accessory Buildings				50'	25'	5'

2. Height Regulation: any building hereafter erected or structurally altered may be erected to any height not in conflict with other existing or future ordinances of Monroe County, Iowa.

3. Items number 4 and 5 under Accessory uses are exempt from front yard set backs.

4. Accessory buildings, if located in the rear yard, may be placed within five (5) feet of a side lot line.

5. Spaces for off-street parking and loading shall be as required in Section 7.

Subd. 5. A-2 Agricultural District

Intent: The A-2 Agricultural district is intended and designed to provide for those activities which are strongly interrelated with agricultural uses and must therefore be located in agricultural areas.

A. Principal Permitted Uses.

1. Any principal permitted use allowed in the A-1 Agricultural Preservation District.

2. Stables, private and public, and riding academies and clubs, and any other structures for housing animals or fowl. Any such structures must be located at least one hundred (100) feet from all boundary lines of the property on which it is located.

3. Grain elevators with the usual accessory structures.

4. Any public building or structure or facility erected and used by any department of the township, county, city or state government, including but not limited to public aircraft landing fields and facilities.

5. Livestock feed and grain sales.

6. Animal hospitals and veterinary clinics.

7. Seed sales.

B. Conditional Uses

1. Anhydrous ammonia storage and/or pumping facilities.

2. Fertilizer and agricultural chemical.

3. Commercial feedlots, provided that all of the waste water treatment requirements of the Iowa Departments of Natural Resources are met and the necessary permits obtained; and further provided that no commercial feedlot shall be located closer than one (1) mile to any residential district boundary, or to the corporate limits of any city or town.

4. Commercial microwave, radio and television towers.

5. Church or other places of worship, including parish house and Sunday School building.

6. Cemeteries, including mausoleums and crematoriums, provided that any mausoleum or crematory shall be distant at least two hundred (200) feet from any adjacent property, street and highway lines.

7. Temporary facilities for music events, sports events, commercial exhibitions and carnivals.

8. Temporary asphalt and concrete mixing plants.

9. Private non-commercial landing fields.

10. Golf courses (except miniature golf courses or practice driving ranges operated for commercial purposes), private gun clubs, skeet shooting ranges, and similar uses.

11. Salvage yards (see Section 11, Subd. 3 for additional requirements.)

12. Mining (see Section 11, Subd. 3 for additional requirements.)

C. Permitted Accessory Uses.

1. Accessory uses permitted in and as regulated by the A-1 district regulations.

D. Performance Standards.

1. Minimum lot area, lot frontage and yard regulations.

Use	Lot Area	Lot Width	Lot Area Per Family	Front Yard	Side Yard	Rear Yard
Dwelling (farm)	1 acre		1 acre			
Single Family Dwelling	1 acre	150'	1 acre	50'	25'	40'
Other Permitted Structures	1 acre	150'		50'	25'	40'
Accessory Buildings				50'	25'	5'

2. Height Regulation: any building hereafter erected or structurally altered may be erected to any height not in conflict with other existing or future ordinances of Monroe County, Iowa.

3. Items number 4 and 5 under Accessory uses are exempt from front yard set backs.

4. Accessory buildings, if located in the rear yard, may be placed within five (5) feet of a side lot line.

5. Spaces for off-street parking and loading shall be as required in Section 7.

Subd. 6. R-1 Single Family Residential District

Intent: The R-1 Single Family Residential District is intended and designed to provide for the development of both low and medium density single-family subdivisions in the rural areas. This district is not intended to permit isolated rural dwellings. Any land rezoned to "R-1" shall be located on adequately constructed and paved county/state roads.

A. Principal Permitted Uses.

1. Single-Family Detached Dwellings. Maximum average density shall not exceed eight (8) dwelling units per acre.

2. Family homes as defined by Chapter 358A.25, Code of Iowa, 1987.

3. Churches or other places of worship and Sunday School buildings.

4. Public and private non-commercial parks, playgrounds, recreation areas and facilities.

B. Conditional Uses.

1. Two-family dwelling units.

2. Schools, public and private educational institutions.

3. Public water supply and sewage treatment facilities.

4. Home occupations.

C. Permitted Accessory Uses.

1. Uses of land or structures customarily incidental and subordinate to one of the principal permitted uses, unless otherwise excluded.

2. Church bulletin boards.

3. Temporary buildings for uses incidental to construction work, which buildings will be removed upon completion or abandonment of the construction work.

D. Performance Standards.

1. Minimum lot area, lot frontage and yard requirements.

Use	Lot Area (sq. ft.)	Lot Width	Front Yard	Side Yard	Rear Yard
Single-family	5,000	50'	25'	8'	35'
Two-family	8,000	75'	25'	8'	35'
Accessory Buildings				5'	5'

2. Height Regulation: no principal building shall exceed two (2) stories or thirty-five (35) feet in height. No accessory building shall exceed fifteen (15) feet or one (1) story in height.

3. Accessory buildings must be located in the rear yard.

4. Spaces for off-street parking and loading shall be as required in Section 7.

Subd. 7. R-2 Single Family Residential District.

Intent: The R-2 Single Family Residential District is intended and designed to provide for the development of low density single-family subdivisions in the rural areas. This district is not intended to permit isolated rural dwellings. Any land rezoned to "R-2" shall be located on adequately constructed and paved county/state roads.

A. Principal Permitted Use.

1. Any principal permitted use allowed in the R-1 district.

B. Conditional Uses.

1. Any conditional use permitted in the R-1 district.

C. Permitted Accessory Uses.

1. Accessory uses permitted in the R-1 district.

D. Performance Standards.

1. Minimum lot area, lot frontage and yard requirements.

Use	Lot Area (sq. ft.)	Lot Width	Front Yard	Side Yard	Rear Yard
Single-family	8,000	80'	25'	15'	35'
Two-family	10,000	90'	25'	15'	35'
Accessory Buildings				5'	5'

2. Height Regulations: single-family dwellings, two-family dwellings, and accessory buildings shall be regulated as described in the R-1 district.

3. No principal building shall be less than 20' in width.

4. All dwellings shall be constructed on a permanent foundation.

5. Accessory buildings must be located in the rear yard.

6. Spaces for off-street parking and loading shall be as required in Section 7.

Subd. 8. RMH – Residential Mobile Home District.

Intent: The RMH – Residential Mobile Home District is intended and designed to provide for planned mobile

home residential developments, including related recreational, commercial, and other service facilities.

A. Principal Permitted Uses.

1. Mobile Home parks but not including mobile homes sales and display areas. No part of any park shall be used for non-residential purposes except such uses as are required for the direct servicing and well-being of park residents and for the management and maintenance of the park. This shall in no way prohibit the sale by the owner of a mobile home located on a home stand and connected to the pertinent utilities.

2. Public and private non-commercial parks, playgrounds, recreation areas and facilities.

B. Conditional Uses.

1. Public water supply and sewage treatment facilities.

2. Home occupations.

C. Permitted Accessory Uses.

1. Subordinate buildings or structures which are in addition to or supplement the facilities provided by a mobile home, such as awnings, cabanas, storage structures, carports, and porches.

2. Accessory uses may include common facility service buildings which provide laundry facilities, sanitary facilities, recreational facilities, or non-automotive commercial uses supplying essential goods or services primarily for the use of the mobile home park residents; also, park management buildings,

maintenance buildings, community buildings, one dwelling unit to be occupied by the owner or administrator of the park, and other uses similar in nature. All such buildings shall be located within the central park area.

D. Performance Standards.

1. Minimum lot area, lot frontage and yard requirements.

Use	Lot Area (sq. ft.)	Lot Width	Front Yard	Side Yard	Rear Yard
Single Units	3,000	45'	10'	15'	15'
Doublewide Units	4,500	55'	10'	15'	15'

2. Height Regulation: no mobile home or accessory building shall exceed fifteen (15) feet in height.

3. Accessory buildings shall not be located in the front yard.

4. Spaces for off-street loading and parking shall be as required in Section 7.

E. Mobile Home Park Standards.

The following are the minimum requirements for mobile home parks.

1. *Recreation.* A minimum of two hundred fifty (250) square feet for each lot shall be provided for one or more recreational areas which shall be easily accessible to all park residents. The required recreational area shall be computed in addition to the minimum lot area specified herein. Recreation areas may

include space for community building and community use facilities, such as indoor recreation areas, swimming pools, hobby and repair shops, and similar uses.

2. *Utilites.* Sewer and water facilities shall be provided for each mobile home park space in accordance with all applicable State statutes and regulations. No mobile home shall be occupied unless it is served by common sanitary sewage and water supply. Any lagoons or other treatment facility constructed in conjunction with the development shall be located not less than seventy-five (75) feet from any public road, street, or lot line (in the case of a lagoon, this distance shall be measured from the outside toe of the levee slope).

3. *Mobile Home Stand.* A stand shall be provided on every mobile home lot to accommodate the mobile home and its attached accessory structures. The stand shall provide an adequate foundation and anchoring facilities to secure the mobile home against any accidental movement. The mobile home stand shall react as a fixed support and shall as such remain intact without unsafe deformation and abnormal internal movement under the weight of the mobile home due to frost action, inadequate drainage, vibration, wind, or other forces acting on the structure. The mobile home stand shall be graded to obtain adequate surface drainage. The material used in constructing the stand should be durable and capable of supporting the expected load, regardless of the weather.

4. *Ground Anchors.* Ground anchors shall be installed at each mobile home stand prior to

or when a mobile home is located thereon to permit tiedowns of mobile homes. Provisions for ground anchors shall be made in accordance with the current issue of the Iowa Administrative Code.

5. *Skirting.* Skirtings of a permanent type material and construction shall be installed within sixty (60) days of installation of the mobile home to enclose the open space between the bottom of the mobile home floor and the grade level of the mobile home stand. This skirting shall be maintained in an attractive manner consistent with the exterior of the mobile home and to preserve the appearance of the mobile home park.

6. *Streets.*

   a. *Pavement Widths.*

      1. Entrance streets and all other collector streets with guest parking allowances: Thirty-four (34) feet.

      2. Collector streets with no parking: Twenty-four (24) feet.

      3. Minor streets serving less than forty (40) Lots with parking on one side: Twenty-four (24) feet.

      4. Minor or cul-de-sac streets serving less than forty (40) lots with no parking: Eighteen (18) feet.

      5. One-way minor streets serving less than twenty (20) lots with no parking: Fourteen (14) feet.

   b. *Street improvements.* All streets shall be provided with a smooth, hard and dense

surface which shall be durable and well drained under normal use and weather conditions. The surface shall be maintained free of cracks and holes and its edges shall be protected by suitable means to prevent raveling and shifting of the base.

7. *Common Storm Safety Facility.* A common storm safety facility capable of providing adequate shelter from severe weather for all mobile home park residents shall be provided.

8. *Lighting.* Adequate lighting shall be provided for all streets, walkways, buildings, and other facilities subject to night-time use.

9. *Fire Protection Access.* Access for fire protection services shall be such as to permit fire apparatus to approach within at least one hundred (100) feet of each mobile home.

G. *Site Development Plan.* Prior to the issuance of a permit for the construction of a mobile home park, a comprehensive site plan shall be submitted for review and approval of the Board of Supervisors. The Board of Supervisors may approve said plan or require such changes thereto as are deemed necessary to carry out the spirit and intent of this Ordinance. The site plan shall be at a scale of not more than one hundred (100) feet to the inch, and shall show as a minimum the following:

1. Name and address of the owner and developer.

2. Location and legal description of the mobile home park.

3. The area and dimensions of the tract of land.

4. The number, location, and size of all mobile home lots, stands, and parking facilities.

5. The location and width of roadways and walkways.

6. The location of water and sewer lines.

7. Plans for and specifications of the water supply.

8. Plans and specifications of all buildings constructed or to be constructed within the mobile home park.

9. The location and details of lighting and electrical systems.

10. The location of recreation areas and facilities.

11. Approval of all applicable State agencies and departments.

12. Existing contours shown at intervals of not more than two (2) feet.

13. Screening and landscaping.

14. When the development is intended to be subdivided into individual lots, a description of the proposed restrictions, agreements, or other documents indicating the manner in which any land intended for common or quasi-public use, but not proposed to be in public ownership, will be held, owned and maintained in perpetuity for the indicated purposes.

Subd. 9. *C-1 Commercial District.*

Intent: The C-1 Commercial District is intended and designed to provide for the normal business and commercial uses required to serve the local needs of the unincorporated areas of the county.

A. Principal Permitted Uses.

1. Retail businesses, service establishments or recreational uses such as the following:

a. Antique shops.

b. Art shops/galleries.

c. Barber shop/parlor.

d. Book, flower, and gift shops.

e. Clinics (medical, dental and similar types).

f. Clothing retail and service.

g. Confectionery stores, dairy stores including ice cream or snack bars.

h. Gas/service station.

i. Grocery stores.

j. Laundromat (coin operated).

k. Offices, business and professional.

l. Restaurants.

m. Taverns.

n. Theater.

B. Conditional Uses.

1. Public water supply and sewage treatment facilities.

2. Commercial microwave, radio and television towers.

3. Commercial campgrounds and travel trailer parks.

4. Any public building or structure or facility erected and used by any department of the township, county or city government, including but not limited to aircraft landing fields and facilities.

5. Any land or building used by a private utility service for the purpose of generating or converting power.

C. Permitted Accessory Uses.

1. Uses of land or structures customarily incidental and subordinate to one of the principal permitted uses, unless otherwise excluded.

D. Performance Standard.

1. Minimum lot area, lot frontage and yard requirements.

Use	Lot Area	Lot Width	Front Yard	Side Yard	Rear Yard
Any Permitted Use	no minimum required		25'	none required except adjoining any "R" district, in which case not less than 15'	
Accessory Use				none required except adjoining any "R" district, in which case not less than 5'	

2. Height Regulation: no principal building shall exceed three and one-half (3½) stories in height or forty-five (45) feet, whichever is lower. No accessory building shall exceed one (1) story or fifteen (15) feet in height.

3. Accessory buildings must be located in the rear yard.

4. Spaces for off-street parking and loading shall be as required in Section 7.

Subd. 10. *C-2 Highway Commercial Service District.*

Intent: The C-2 Highway Commercial Service District is intended and designed to accommodate auto-oriented commercial establishments and agriculture commercial and service establishments.

A. Principal Permitted Uses.

1. Any principal permitted use allowed in the C-1 Commercial District.

2. Retail businesses, service establishments or recreational uses such as the following:

   a. Agricultural retail/service outlets.

   b. Animal hospital/veterinary clinics.

   c. Automobile, mobile home, motorcycle, snowmobile, boat and farm implement sales and/or service establishments.

   d. Bowling alleys.

   e. Car wash.

   f. Commercial swimming pools, golf driving ranges, miniature golf courses and similar recreational uses and facilities.

   g. Lumbar yards, carpenter/cabinet shops.

   h. Monument sales yards.

   i. Motels.

   j. Nurseries and green houses.

   k. Plumbing, heating, electrical contractor shops.

   l. Blacksmith.

   m. Wholesale warehouse.

B. Conditional Uses.

1. Any conditional use described in the "C-1" district.

2. Adult bookstore, theater, massage establishment.

3. Commercial microwave, radio and television towers.

C. Permitted Accessory Uses.

1. Uses of land or structures customarily incidental and subordinate to one of the principal permitted uses, unless otherwise excluded.

D. Performance Standards.

1. Minimum lot area, lot frontage and yard requirements.

Use	Lot Area	Lot Width	Front Yard	Side Yard	Rear Yard
Any Permitted Use	no minimum required		50'	25'	35'
Accessory Use				5'	5'

2. Height Regulation: no principal building shall exceed three and one-half (3½) stories or forty-five (45) feet in height. No accessory building shall exceed one and one-half (1½) stories or twenty-five (25) feet in height.

3. Accessory buildings must be located in the rear yard.

4. Spaces for off-set parking and loading shall be as required in Section 7.

Subd. 11. *I-1 Light Industrial District.*

Intent: The I-1 Light Industrial District is intended and designed to accommodate light manufacturing and industrial activities that may suitably be located in areas of relatively close proximity to non-industrial development. This district is not intended for industries that

generate excessive air pollution, odors, noise, vibration, etc.

A. Principal Permitted Uses.

1. Bakeries, wholesale.
2. Welding, metal working shops.
3. Carting, express, hauling, truck terminal, and storage yard.
4. Contractor's equipment storage yard.
5. Creamery, bottle works, ice cream manufacturing (wholesale).
6. Enameling, lacquering, japanning.
7. Foundry, casting lightweight nonferrous metals or electric foundry not causing noxious fumes or odors.
8. Laboratories.
9. Manufacture and/or assembly of electric/gas appliances, instruments, pottery, ceramic products, signs, light sheet metal products.
10. Machine shops.
11. Sawmill, planing mill.
12. Printing, publishing houses.
13. Woodworking, sheet metal, plumbing, sign painting shops.
14. Wholesale storage warehousing.
15. Public water supply and sewage treatment facilities.
16. Any public building or structure or facility erected and used by any department of the

township, county or city government, including but not limited to aircraft landing fields and facilities.

B. Conditional Uses.

1. Chemical processing and storage.
2. Mineral processing and storage.
3. Grain processing and storage.
4. Bulk storage of petroleum products.
5. Commercial microwave, radio and television towers.
6. Private aircraft landing fields.
7. Salvage yards.

C. Permitted Accessory Uses.

1. Uses of land or structures customarily incidental and subordinate to one of the principal permitted uses.

D. Performance Standards.

1. Minimum lot area, lot frontage and yard requirements.

Use	Lot Area	Lot Width	Front Yard	Side Yard	Rear Yard
Any Permitted Use	no minimum requirement	100'	50'	25'(a)	35'(a)
Accessory Use				5'	5'

(a) When adjacent to any "R" district or existing residence, side and rear yards shall be not less than fifty (50) feet.

2. Height Regulation: no principal building shall exceed three and one-half

(3½) stories or forty-five (45) feet in height. No accessory building shall exceed one and one-half (1½) stories or twenty-five (25) feet in height.

3. Spaces of off-street parking and loading shall be as required in Section 7.

Subd. 12. I-2 Heavy Industrial District.

Intent: The I-2 Heavy Industrial District is intended and designed to accommodate uses of a heavy industrial nature. This district should be located only in sound industrial locations with direct access to highways, other needed transportation facilities and utilities.

A. Principal Permitted Uses.

1. Any principal permitted use allowed in the "I-1" district.
2. Chemical processing and storage.
3. Mineral processing and storage.
4. Grain processing and storage.
5. Bulk storage of petroleum products.
6. Anhydrous ammonia storage.
7. Cement, lime gypsum and other similar materials manufacture.
8. Concrete mixing, concrete products manufacture.
9. Fat rendering, fertilizer, or glue manufacture.
10. Offal or dead animal reduction.
11. Slaughter houses, meat packing and processing plants, and stockyards.

B. Conditional Uses.

1. Commercial microwave, radio and television towers.

2. Private aircraft landing fields.

3. Salvage yards.

4. Sanitary landfills (see Section 11, Subd. 3).

C. Permitted Accessory Uses.

1. Any use of land or structures customarily incidental and subordinate to the principal permitted uses.

D. Performance Standards.

1. Minimum lot area, lot frontage and yard requirements.

Use	Lot Area	Lot Width	Front Yard	Side Yard	Rear Yard
Any Permitted Use	no minimum requirement	100'	100'	25'(a)	25'(a)
Accessory Use				4'	4'

(a) When adjacent to any "R" district boundary or an existing residence, a front, side and/or rear yard setback of three hundred (300) feet shall be required.

2. Height Regulation: no height limitation, provided, however, that no structure shall be permitted to extend into the approach zones, clear zones, or other restricted air space required for the protection of any public airport.

3. Spaces for off-street parking and loading shall be as required in Section 7.

4. *Required Conditions.* The proposed location, design, construction, and operation of the particular use shall adequately safeguard the health, safety, and general welfare of persons residing or working in adjoining or surrounding properties. The uses permitted in this District are subject to the limitation that the use is so operated that it does not emit an obnoxious or dangerous degree of heat, glare, radiation, smoke, gas, fumes, or dust beyond the boundary line of the lot upon which it is located; that all materials or waste which might cause fumes or dust, which constitute a fire hazard, or which may be edible or otherwise attractive to rodents or insects, shall be stored outdoors in closed containers; that flammable and explosive liquids stored above ground shall be enclosed in a walled area of sufficient volume to contain the entire contents of such tanks in the event of leakage or fire. The best practical means available for the disposal of refuse matter or water-carried wastes, the abatement of obnoxious or offensive odor, dust, smoke, gas, noise, or similar nuisances shall be employed. All facilities required for the discharge, collection and treatment of liquid, solid, or gaseous wastes shall be designed, constructed, and operated in accordance with all applicable statutes and regulations of the State of Iowa.

Subd. 13. Airport (Overlay) District.

Intent: The Airport (Overlay) District is intended and designed to place additional development restrictions upon the land encompassing the Albia Municipal Airport and that land lying under the airspace zones required for safe aircraft operations, which are defined

as, horizontal zones, conical zones, approach zones and transitional zones, in order to eliminate airport hazards.

A. AIRSPACE ZONES AND AIRSPACE HEIGHT LIMITATIONS.

In order to carry out the provisions of this Section, there are hereby created and established certain airspace zones which are depicted on the Albia Municipal Airport Height Zoning Map. A structure located in more than one (1) zone of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

1. *Horizontal Zone* – The land lying under a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by:

Swinging arcs of 5,000 feet radii from the center of each end of the primary surface of runway(s) 13 and 31, and connecting the adjacent arcs by lines tangent to those arcs.

(NOTE: The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000 feet arc is encompassed by tangents connecting two adjacent 10,000 feet arcs, the 5,000 feet arc shall be disregarded on the construction of the perimeter of the horizontal surface.)

No structure shall exceed 150 feet above the established airport elevation in the horizontal zone, as depicted on the Albia Municipal Airport Height Zoning Map.

2. *Conical Zone* – The land lying under a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet. No structure shall penetrate the conical surface in the conical zone, as depicted on the Albia Municipal Airport Height Zoning Map.

3. *Approach Zone* – The land lying under a surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. (NOTE: An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.)

   a. The inner edge of the Approach Surface is:

      i. 500 feet wide for runway(s) 13 and 31.

   b. The outer edge of the approach zone is:

      i. 1,500 feet for runway 13.

      ii. 2,000 feet for runway 31.

   c. The Approach Zone extends for a horizontal distance of:

      i. 5,000 feet at a slope of 20 to 1 for runway(s) 13 and 31.

   No structure shall exceed the approach surface to any runway, as depicted on the Albia Municipal Airport Height Zoning Map.

4. *Transitional Zone* – The land lying under those surfaces extending outward and

upward at right angles to the runway centerline and the runway centerline extended at a slope of 7 to 1 from the sides of the primary surface and from the sides of the Approach Surfaces.

No structure shall exceed the Transitional Surface, as depicted on the Albia Municipal Airport Height Zoning Map.

5. No structure shall be erected in Monroe County that raises the published Minimum Descent Altitude for an instrument approach to any runway, nor shall any structure be erected that causes the Minimum Obstruction Clearance Altitude or Minimum Enroute Altitude to be increased on any Federal Airway in Monroe County.

SECTION 7: OFF-STREET PARKING AND LOADING REQUIREMENTS.

A. *Off-Street Parking Requirements.* In all districts in connection with every industrial, commercial, business, trade, institutional, recreational, or dwelling use, and similar uses, space for parking and storage of vehicles shall be provided in accordance with the following schedule. Required off-street parking facilities shall be primarily for the parking of private passenger automobiles of occupants, patrons or employees of the principal use served.

1. Automobile sales and service garages: Fifty (50) percent of gross floor area.

2. Bowling alleys: Five (5) spaces for each lane.

3. Churches and schools: One (1) parking space for every eighty (80) square feet of principal auditorium, including balcony, if any, and one (1) parking space for each staff member.

4. Dance halls, assembly halls: Two hundred (200) percent of floor area used for dancing or assembly.

5. Dwelling: Two (2) parking spaces for each family or dwelling unit.

6. Hospitals: One (1) space for each five (5) beds, plus one (1) space for each three (3) employees, plus one (1) space for each two (2) staff doctors.

7. Hotels, motels, tourist courts, sororities, fraternities, lodging houses: One (1) space for each bedroom.

8. Manufacturing plants: One (1) parking space for each three (3) employees on the maximum working shift but in no case less than one (1) space for each five hundred (500) square feet of gross floor area.

9. Mobile home park: Two (2) parking spaces for each mobile home lot.

10. Nursing, convalescent and retirement homes: One (1) space per eight (8) beds, plus one (1) space per three (3) employees, plus one (1) space for each resident staff member.

11. Restaurants, taverns, and nightclubs: Two hundred (200) percent of gross floor area.

12. Retail stores, shops, grocery stores, etc. over two thousand (2,000) square feet gross

floor area: Two hundred fifty (250) percent of gross floor area.

13. Retail stores, shops, grocery stores, etc., under two thousand (2,000) square feet gross floor area: One hundred (100) percent of gross floor area.

14. Theaters, assembly halls with fixed seats and sports arenas: One (1) space for each five (5) seats.

15. Wholesale establishments or warehouses: One (1) space for each two (2) employees, but in no case less than one (1) space for each one thousand (1,000) square feet of gross floor area.

B. *Additional Parking Requirements.*

1. In the case of any building, structure or premises, the use of which is not specifically mentioned herein, the parking requirements for a use which is mentioned and to which said use is similar shall apply.

2. Where a parking lot does not abut on a public or private street, road, alley or easement of access, there shall be provided an access drive not less than ten (10) feet in width in case of a dwelling, and not less than twenty (20) feet in width in all other cases, leading to the loading or unloading spaces and parking or storage areas required hereunder in such a manner as to secure the most appropriate development of the property in question; provided, however, such easement of access or access drive shall not be located in any agricultural or residence district except where

serving a permitted use in an agricultural or residence district.

3. Every parcel of land hereafter used as a public or private parking area, including a commercial parking lot, shall be developed and maintained in accordance with the following requirements:

   a. No part of any parking space shall be closer than five (5) feet to any established highway, road, or street right-of-way line. In case the parking lot adjoins an "R" District, it shall be set back at least five (5) feet from the "R" District boundary and shall be screened from adjacent property by a planting screen not less than ten (10) feet in width and six (6) feet in height or by a fence, wall, berm or other comparable means.

   b. Any lighting used to illuminate any off-street parking area shall be arranged to reflect the light away from adjoining premises in any "R" District, and shall be directed so as to avoid glare and confusion for moving vehicular traffic.

4. Off-street parking areas in residential districts shall be provided on the same lot with the principal use. Off-street parking and loading areas may occupy all or part of any required yard or open space, subject to the provisions of this section.

C. *Off-Street Loading Requirements.* In any district in connection with every building or part thereof hereafter erected having a gross floor area of ten thousand (10,000) square feet or more, which is

to be occupied by manufacturing, storage, warehouse, goods display, retail store, wholesale store, market, hotel, hospital, or other uses similarly requiring the receipt or distribution by vehicles of material or merchandise, there shall be provided and maintained on the same lot with such building at least one (1) off-street loading space, plus one (1) additional such loading space for each twenty thousand (20,000) square feet or major fraction thereof of gross floor area so used in excess of ten thousand (10,000) square feet.

1. Each loading space shall be not less than twelve (12) feet in width and forty (40) feet in length.

2. Such space may occupy all or part of any required yard or open space, except when adjoining an "R" District, it shall be set back ten (10) feet and screened from adjacent property by a planting screen not less than ten (10) feet in width and six (6) feet in height or by a fence, wall, berm, or other comparable means.

SECTION 8: SIGN AND BILLBOARD REGULATIONS

SIGNS: The following regulations govern permitted signs in the various zoning districts of Monroe County.

Zoning District	Permitted Signs
All	A. One board or sign not to exceed fifty (50) square feet in area referring to the construction, lease, hire, or sale of a building, premises, or lots; which sign

shall refer to property upon which the sign is located and shall be removed as soon as the premises are sold or leased or construction completed.

A-1, A-2 B. Signs, not to exceed a combined total of twenty (20) square feet in area, identifying the premises or indicating the product or material or equipment used on the premises.

RMH C. One indirectly lighted sign, not to exceed thirty (30) square feet in aggregate display area, may be erected at any main entrance to a mobile home park. Such sign may show the name of the mobile home park and other pertinent information thereto.

C-1, C-2, I-1, I-2 A-2 D. Exterior signs located on the street frontages of principal buildings referring only to a use or uses located within such building, and attached or integral thereto, provided that:

1. Such signs shall not have an aggregate surface area in excess of twenty-five (25) percent of the total of the building elevation to which they are attached.

2. Signs which project out from the building more than eighteen (18) inches must be at least twelve (12) feet above grade and may project a maximum of six (6) feet.

3. No sign shall project above the roof line or parapet, where one exists

C-1, C-2
I-1, I-2

E. One free standing or post sign referring only to a use or uses conducted on the premises may be erected in any yard abutting a public street, provided, however:

1. That such signs shall not have a surface area in excess of fifty (50) square feet on any one side, and not more than two (2) sides of said sign shall be used for advertising purposes.

2. The bottom of the surface area of such sign shall not be less than twelve (12) feet above the ground surface upon which it is erected.

3. The height of such sign shall not exceed twenty-five (25) feet.

4. Such signs shall not extend over street or road right-of-way lines or otherwise obstruct or impair the vision or safety of pedestrians and motorists.

All

F. Temporary signs with political advertisements not to exceed an aggregate surface area of thirty-two (32) square feet. Such signs may be erected for a period not to exceed forty-five (45) days before the date of the election to which the signs pertain and shall be removed within seven (7) days following subject election.

SECTION 9: NONCONFORMING USES

Nonconforming Uses of Land, Nonconforming Structures, and Nonconforming Use of Structures.

Intent: Within the various districts established by this Ordinance or by amendments that may later be adopted, there exist structures, uses of structures and uses of land which were lawful prior to the adoption of this Ordinance but which would be prohibited, regulated, or restricted under the provisions of this Ordinance. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. Such uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this Ordinance that such nonconformities shall not be enlarged upon, expanded or extended.

A. *Nonconforming Use of Land and Structures.*

1. No nonconforming use of a structure, land, or structure and land in combination which remains idle or unused for a continuous period of one (1) year, whether or not the equipment or fixtures are removed, shall again be used except in conformity with the regulations of the district in which such building or land is located.

2. The casual, intermittent, temporary, or illegal use of a structure, land, or structure and land in combination shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on part of a lot or tract shall not be construed to have established a nonconforming use on the entire lot or tract.

B. Nonconforming Use of Land. The lawful use of land upon which no building or structure is erected or constructed, which becomes nonconforming under the terms of this Ordinance as adopted or amended, may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming use shall be enlarged or increased nor extended vertically or horizontally to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.

2. No such conforming use shall be moved in whole or in part to any other portion of the lot or parcel which was not occupied by such use at the effective date of adoption or amendment of this Ordinance.

3. If any such nonconforming use of land ceases for any reason for a period of more than six (6) months, any subsequent use of such land shall conform to the district regulations for the district in which such land is located.

C. *Nonconforming Use of Structures.* If a lawful use of a structure, or of a structure and land in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be allowed in the district under the terms of this Ordinance, the use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted entirely or in part to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, reconstructed, moved or

structurally altered except when required by law, unless the use is changed to a use permitted in the district in which such structure is located.

2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance. No such use shall be extended to occupy any land outside such building.

3. If no structural alterations are made, a nonconforming use of a structure may be changed to another nonconforming use of a similar nature within the same or a more restrictive classification. Whenever a nonconforming use has been changed to a more restrictive use or to a conforming use, such use shall not thereafter be changed to a less restrictive use.

4. Any structure devoted to a use made nonconforming by this Ordinance that is destroyed by any means to an extent of sixty (60) percent or more of its fair market value at the time of destruction, exclusive of the foundation, shall not be reconstructed and used as before such happening. If the structure is less than fifty (50) percent destroyed above the foundation, it may be reconstructed and used as before provided this is done within six (6) months of such happening, and the structure is built of like or similar materials.

D. *Nonconforming Structures.* Where a structure exists at the effective date of adoption or amendment of this Ordinance which could not be built

under the terms of this Ordinance by reason of restrictions on area, lot, coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such structure may be enlarged or altered in a way which increases its nonconformity.

2. Should such structures be destroyed by any means to an extent of sixty (60) percent or more of its fair market value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.

E. Required Repairs. Nothing in this Ordinance shall be deemed to prevent the restoration to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

SECTION 10: EXCEPTIONS AND MODIFICATIONS

The regulations specified in this Ordinance shall be subject to the following exceptions, modifications, and interpretations:

A. Use of Legally Established Nonconforming Lots. A legally established lot or plot of official record as of the effective date of this Ordinance, which becomes nonconforming as a result of amendments to this Ordinance, may be developed with structures or uses permitted within the district in which the lot is located subject to the following:

1. When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than that required for the intended use, then the lot may be used as proposed just as if it were conforming.

2. In any district where dwellings are permitted, a single family dwelling may be located on any legally established nonconforming lot irrespective of the lot area or width, provided however:

    a. The sum of the side yard widths of any such lot shall not be less than thirty (30) percent of the width of the lot, but in no case less than ten (10) percent of the width of the lot for any one side yard.

    b. The depth of the rear yard of any such lot need not exceed twenty (20) percent of the depth of the lot, but in no case shall be less than twenty (20) feet.

B. Chimneys, cooling towers, elevator bulk-heads, fire towers, monuments, stage towers or scenery lots, water towers, churches, ornamental towers and spires, radio or television towers or necessary mechanical appurtenances may be erected to a height in accordance with existing or hereafter adopted regulations of Monroe County; provided, however, that no such structure shall be permitted to extend into the approach zones, clear zones or other restricted air space required for the protection of any public airport.

C. Accessory Buildings. Accessory buildings located on corner lots shall conform to the set-back regulations on the side street. Accessory buildings may be erected as a part of the principal building, or may be connected thereto by a breeze-way or similar structure, provided all yard requirements for a principal building are complied with. An accessory building which is not a part of the main building shall not occupy more than thirty (30) percent of the rear yard. No accessory building shall be constructed upon a lot until the construction of the main building has actually commenced, and no accessory building shall be used unless the main building on the lot is also being used, and no accessory building shall be used for dwelling purposes except for a period not to exceed one (1) year during the construction of the principal building.

D. Every part of a required yard shall be open to the sky, unobstructed by any structure, except for the projection of sills, belt course, cornices, and ornamental features which are not to exceed twenty-four (24) inches.

E. No basement or cellar shall be occupied for residential purposes until the remainder of the building has been substantially completed, except for a period not to exceed one (1) year during construction of the principal building.

F. Open-lattice enclosed fire escapes, fireproof outside stairways, and balconies opening upon fire towers, and the ordinary projections of chimneys and flues into the rear yard may be permitted for a distance of not more than three and one-half (3 1/2) feet and where the same are so placed as not to obstruct light and ventilation.

G. Unenclosed terraces, uncovered porches, platforms, and ornamental features which do not extend more than three (3) feet above the floor level of the ground story may project into a required yard, provided these projections are distant at least two (2) feet from the adjacent side lot line.

H. For the purpose of the side yard, regulations, a two-family dwelling, or a multiple dwelling, shall be considered one (1) building occupying one (1) lot.

I. Temporary buildings and uses that are used only in conjunction with construction work may be permitted in any district during the period of construction, but such temporary buildings shall be removed upon completion of the construction work.

J. More than one (1) industrial, commercial, multiple dwelling or institutional building or use may be established upon a single lot or tract in a district permitting these uses, provided that the yards and open spaces required around the boundaries of the lot or tract shall not be encroached upon by any such buildings; and provided further that there shall be no change in the intensity of use.

K. Where more than forty (40) percent of the frontage in a block has been built up with buildings having a front yard, then the building line of the building to be erected shall conform to the natural building lines of the block as determined by the existing buildings.

L. In instances where buildings are erected containing two (2) or more uses housed vertically, the

required side yards for the first floor use shall control.

M. Within the A-1 and A-2 Agricultural District, a farmstead in existence at the time of adoption of this Ordinance may be severed from the farm. A minimum of one (1) acre for each dwelling unit of the farmstead is required, provided that side and rear yard requirements are met. An existing farmstead shall be defined as: the combination of farm dwelling and any farm accessory buildings, well, or windbreak plantings used or previously used and occupied by a person or family employed, fully or partially, in the agricultural pursuits of the farm on which it is located. To qualify as an existing farmstead for the purpose of being severed from the farm, the following minimum criteria must be met:

1. The farm dwelling shall have been constructed prior to the effective date of this Ordinance.

2. Minimum evidence of the farmstead's existence shall include:

   a. Previous tax records establishing existence of the farm dwelling; and

   b. Existence of 75 percent of the farm dwelling's foundation.

N. With the A-1 and A-2 District on property containing a non-farm residence, a mobile home or manufactured home conforming to the tie down requirements as specified in Section 6, Subd. 8, and provided with septic and water facilities and conforming to the regulations for an accessory building, shall be allowed adjacent but not closer than ten (10) feet to an established residential structure for the occupancy of a member of the

immediate family living in the principal structure. A special accessory building permit shall be valid for only one year and may be renewed by reapplication for one year increments thereafter. This permit shall expire upon the death or relocation of the occupant to another place of residency.

SECTION 11: ADMINISTRATION

Subd. 1. *Zoning Administrator*

A. There is hereby established the position of Zoning Administrator, who shall be appointed by the Board of Supervisors. The Zoning Administrator shall administer and enforce the provisions of this Ordinance and shall have the following powers and duties in connection therewith:

1. The administrator shall issue all permits and certificates required by this Ordinance.

2. If the Administrator shall find that one of the provisions of this Ordinance is being violated, the Administrator shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The Administrator shall order the discontinuance of the illegal use of land, buildings or structures; the removal of illegal buildings or structures, or of additions, alteration or structural changes thereto; the discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance and the Board of Supervisors to insure compliance with or to prevent violation of its provisions.

3. The Administrator shall keep a record of all permits, appeals, variances and such other transactions and correspondence pertaining to the administration of this Ordinance.

B. All departments, officials, and public employees of Monroe County who are vested with the duty or authority to issue permits shall insure conformance to the provisions of this Ordinance and shall issue no permit for any use, building or purpose if the same would be in conflict with the provisions of this Ordinance.

C. The Board of Supervisors may, by resolution, delegate the powers and duties of the office of Zoning Administrator to any other officer or employee of the county, or of any city, town, or governmental subdivision within the county, or may combine the powers and duties of this office with any other office or position.

Subd. 2. *Board of Adjustment*

A. A Board of Adjustment is hereby established and shall consist of five (5) members, a majority of whom shall reside within the County but outside the corporate limits of any city, appointed by the Monroe County Board of Supervisors. The five (5) members first appointed shall serve terms of one (1), two (2), three (3), four (4) and five (5) years respectively. Thereafter, terms shall be five (5) years and vacancies shall be filled by the Board of Supervisors for the unexpired term of any member whose term becomes vacant. The Monroe County Board of Supervisors shall have the power to remove any member of the Board of Adjustment for cause, upon written charges and after public hearing.

B. *Chairperson and Meetings.* The Chairperson of the Monroe County Board of Supervisors shall name one (1) of the members of the Board of Adjustment as Chairperson upon appointment, and in case of vacancy, shall name another Chairperson. All meetings of the Board shall be held at the call of the Chairperson and at such time and place within the County as the Board may determine. Such Chairperson, or in his/her absence the acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public.

C. *Procedures.* The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member on every question, or if absent or failing to vote indicating such fact, and shall keep complete records of its examinations and other official actions. Every rule, regulation, every amendment or appeal thereof, and every order, requirement, decision or determination of the Board of Adjustment shall be immediately filed in the office of the Zoning Administrator and shall be public record. The Board of Adjustment shall adopt its own rules of procedure not to conflict with this Ordinance or with the Iowa Statues. The Board of Adjustment shall not be compensated, except for necessary expense.

D. *Appeals.* The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this Ordinance. Such appeal shall be taken within a period of not more than thirty (30) days following the date of the order, requirement, decision or determination, and in the manner

prescribed in the Rules of the Board of Adjustment, by filing with the Administrator and with the Board of Adjustment a notice of appeal specifying the grounds thereof, and by paying a filing fee of twenty-five (25) dollars to the Treasurer of Monroe County, Iowa. When notice of the appeal is filed, the Administrator shall transmit all of the records regarding the appeal to the Chairperson of the Board of Adjustment, including a copy of the letter to an applicant who has been refused a zoning permit. The Board of Adjustment shall take action upon said appeal within sixty (60) days following the date of appeal. An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrator certifies to the Board, after notice of appeal shall have been filed, that by reason of the facts stated in the certificate, a stay would, in the Administrator's opinion, cause imminent peril to life or property. In such case, proceedings shall not by stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application, on notice to the Administrator and on due cause shown.

E. *Powers and Duties.* The Board of Adjustment shall have the following powers, and it shall be its duty:

1. To hear and decide appeals where it is alleged that there is error of law in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this Ordinance.

2. To hear and decide upon applications for variations and, subject to such standards, principles and procedures provided in this Regulation, to vary the strict application of

the height, area, parking or density requirements to the extent necessary to permit the applicant a reasonable use of the property in those specified instances where there are peculiar, exceptional and unusual circumstances in connection with a specific parcel of land, which circumstances do not generally exist within the locality or neighborhood concerned. Special conditions shall include but not be limited to a property owner who can show that his/her property was acquired in good faith and where by reason of exceptional topographical conditions or other extraordinary or exceptional situations, the strict application of the terms of this Ordinance actually prohibits the use of the property in the district. The special conditions and circumstances shall not result from the actions of the applicant. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

3 Upon petition by a property owner to permit exceptions to the terms of this Ordinance as follows:

a. To permit the extension of the district boundary line of a district divides a lot in single ownership, as shown of the record or by existing contract or purchase, at the time of the passage of this Ordinance. In no case shall such extension of the district boundary line exceed fifty (50) feet in any direction.

b. To interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the zoning maps fixing the several districts accompanying and made a part of this Ordinance, where the road layout actually on the ground varies from the road layout as shown on the zoning maps aforesaid.

c. To permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, Act of God, or the Public Enemy, to the extent of more than fifty (50) percent of its fair market value, where the Board finds some compelling public necessity requiring the continuance of the nonconforming use.

The Board, in making any exception to the Ordinance, shall be guided by the general rule that the exceptions shall by their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property; shall not impair an adequate supply of light and air to adjacent property; shall not increase public danger of fire and other threats to safety, and shall not diminish or impair established property values in surrounding areas; provided that any exception granted is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions

practicable. It is not the intention to grant the Board of Adjustment the power or authority to alter or change the Zoning Ordinance or the District Maps. Such power and authority rests solely with the Board of Supervisors.

Exceptions and variances which have been granted in accordance with the provisions of this Ordinance shall be null and void at the end of six (6) months from the date of grant if substantial action has not been taken to accomplish the purpose for which the variance was granted. Completion must be within a reasonable length of time.

F. *Vote.* In exercising the above powers, the concurring vote of three (3) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance. Every variation granted or denied by the Board of Adjustment shall be accompanied by a written finding of fact based on testimony and evidence, and specifying the reasons for granting or denying the variation.

G. *Hearing.* The Board of Adjustment shall fix a reasonable time for the hearing of an appeal, and give written notice thereof to the parties and shall publish notice of the public hearing upon the appeal in a paper of general circulation within the county at least four (4) days, but not more than twenty (20) days before said date of public hearing and decide the same within a reasonable time. Upon the hearing any party

may appear in person, or by agent, or by attorney. The Board of Adjustment may reverse or confirm, in whole or in part, or may modify the order, requirement, decision or determination as in its opinion ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. Any person or persons, jointly or separately, aggrieved by any decision of the Board of Adjustment under the provisions of this Ordinance, or any taxpayer, or any officer, department or bureau of Monroe County, Iowa, may seek such relief through the Courts as provided by Statute.

Subd. 3. *Conditional Uses.*

Conditional uses of land within the zoning districts as set forth in Section Six (6) of this Ordinance may be permitted subject to approval of the Board of Adjustment after notice and public hearing.

A. In its determination upon a particular use at the location requested, the Board shall consider all of the following conditions:

1. That the proposed location, design, construction, and operation of the particular use adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property.

2. That such use shall not impair an adequate supply of light and air to surrounding property.

3. That such use shall not unduly increase congestion in the streets, or public danger of fire and other threats to safety.

4. That such use shall not diminish or impair established property values in adjoining or surrounding property.

5. That such use shall be in accord with the intent, purpose, and spirit of this Ordinance and the Land Use Policies of Monroe County.

B. *Application for Conditional Use Permit.*

1. The applicant for a conditional use permit shall complete and submit to the Zoning Administrator a conditional use permit application form and all supplemental information described therein. A twenty-five (25) dollar permit fee shall be submitted by the applicant at the time of application.

2. The Zoning Administrator shall refer said application to the Board of Adjustment for review.

3. The Board of Adjustment shall hold a public hearing on the application. Notice of the public hearing shall be published in an official newspaper or a newspaper of general circulation at least four (4) days and not more than twenty (20) days before said date of public hearing. Notice of the hearing shall also be mailed to owners of property within five hundred (500) feet of the legal boundaries of the land to be affected by the application. Failure of the Board to notify all property owners by mail as described above shall not invalidate any action taken by the Board, provided such failure was unintentional.

4. The Board of Adjustment shall take action on said application with sixty (60) days following the date of application. The Board of

Adjustment may impose additional conditions upon the permit as it deems necessary to protect the public health, safety and welfare and such conditions may impose a time limit for the use to exist or operate.

5. No application for a conditional use permit shall be resubmitted for a period of three (3) months from the date of said order of denial.

6. In the event the applicant violates any of the conditions set forth in the permit, the Board of Adjustment shall have the authority to revoke the conditional use permit.

C. *Additional Requirements Covering the Extraction of Minerals.*

1. The applicant for a conditional use permit shall submit to the Board of Adjustment a plan for the staged extraction, restoration and reuse of the land affected by the application.

2. A minimum set back of one hundred (100) feet from all property lines shall be maintained. The set back requirement may be waived on the sides adjacent to roadways to allow mining through roads if approved by the Board of Adjustment and the Board of Supervisors.

3. Appropriate fencing, as approved by the Board of Adjustment, shall limit the hazard.

4. Where mineral extraction occurs within one hundred (100) feet of a permanent water course, special provisions shall be made to ensure adequate protection from pollution, siltation, or damage to wildlife and wildlife

habitats. Such provisions shall be clearly stated in the plan.

5. The best practical means available for the disposal of refuse matter or water-carried wastes, the abatement of obnoxious or offensive odor, dust, smoke, gas, noise or similar nuisances shall be employed.

6. The developer shall post a bond with the Monroe County Auditor, which bond will ensure to the County that the restoration for reuse as provided in the approved plan shall be completed by the developer within one (1) year of discontinuance of the extraction activities specified in the approved master plan. The amount of the bond shall not be less than the estimated cost of the restoration, and the amount of the estimate must be approved by the County Engineer. If the restoration is not completed within the specified time, the County may use the bond or any portion thereof to complete the restoration. Bond requirements may be waived or modified if the applicant can demonstrate that bonding under compliance with Chapter 83.A of the 1987 Code of Iowa will be sufficient to ensure restoration of the site as specified in the approved plan.

7. The Board of Adjustment will issue a special permit for mineral extraction for a specific period of time consistent with any State or Federal permit in effect, with the effective date and expiration date of the permit clearly stated.

D. *Additional Requirements Covering Salvage Yards.*

1. A conditional use permit for a rural salvage yard may not be issued for proposed location within a five (5) mile radius of any other lawfully-existing rural salvage yard in Monroe County. The Board shall approve the proposed use after consideration of a report and recommendation from the Zoning Commission and upon finding that the following standards have been met, where applicable:

   a. *Compatibility.* The proposed buildings or use shall be constructed, arranged and operated so as to be compatible with the character of the zoning district and immediate vicinity, and not to interfere with the development, and use of adjacent property in accordance with the applicable district regulations. The proposed development shall not be unsightly, obnoxious nor offensive in appearance to abutting or nearby properties.

   b. *Transition.* The development shall provide for a suitable transition, and if necessary, buffer, between the proposed buildings or use and surrounding properties.

   c. *Vehicle Circulation.* The development shall provide for adequate ingress and egress, with particular attention to vehicular and pedestrian safety and convenience, traffic flow and control, and emergency access.

   d. *Parking and Loading.* The development shall provide all off-street parking and

loading areas as required by this Ordinance, and adequate service entrances and areas.

e. *Nuisance.* The development shall not generate excessive noise, vibration, dust, smoke, fumes, odor, glare, offensive views, groundwater pollution or other undesirable, hazardous or nuisance conditions, including weeds.

f. *Abandonment.* A statement in writing shall be provided by the owner, to become part of the public record, that the area will be cleaned up to the satisfaction of the Zoning Administrator should the salvage yard be abandoned, or moved in whole or in part. A salvage yard which remains idle or unused for a continuous period of one (1) year whether or not fixtures or equipment are removed shall constitute abandonment. The casual, intermittent, temporary, or illegal operation of a salvage yard shall not be sufficient evidence to establish continuous use.

g. *Screening.* Screening shall be provided to eliminate the visual impact of the salvage yard contents by obscuring it from view from adjacent roadways and, as appropriate, adjacent property.

h. *Setbacks.* No salvage shall be stored within one hundred (100) feet of any property line.

E. *Additional Requirements Covering Sanitary Landfills.*

1. The applicant for a conditional use permit shall submit to the Board of Adjustment the following information:

   a. Evidence that the proposed site meets or exceeds all requirements for such activities as regulated by the Iowa Department of Natural Resources.

   b. Evidence that any additional permits required for solid waste disposal and landfilling have been obtained from the appropriate county and/or state officials.

2. A minimum setback of one hundred (100) feet from all property lines shall be maintained.

3. Appropriate fencing as approved by the Board of Adjustment shall limit the hazard.

Subd. 4. *Variances.*

A variance to the provision of this Ordinance may be issued to provide relief to the property owner in those zoning districts where this Ordinance imposes undue hardship or practical difficulties to the property owner in the use of this land, subject to approval of the Board of Adjustment after notice and public hearing.

No Use Variances May Be Issued.

A. A variance may be granted only in the event that the following circumstances exist:

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same

zone or vicinity, and result from lot size or shape, topography, or other circumstances over which the owners of property since the effective date of this Ordinance have had no control.

2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.

3. That the special conditions or circumstances do not result from the actions of the applicant.

4. That granting the variance requested will not confer on the applicancy any special privilege that is denied by this Ordinance to owners of other lands, structures or buildings in the same district.

5. The variance requested is the minimum variance which would alleviate the hardship.

6. The variance would not be materially detrimental to the purposes of this Ordinance, or to property in the same zone.

B *Application for Variance.*

1. The applicant for a variance shall complete and submit to the Zoning Administrator a variance application form and all supplemental information required therein. A twenty-five (25) dollar permit fee shall be submitted by the applicant at the time of application.

2. The Zoning Administrator shall refer said application to the Board of Adjustment for review.

3. The Board of Adjustment shall hold a public hearing on the application. Notice of the public hearing shall be published in an official newspaper or a newspaper of general circulation at least four (4) days and not more than twenty (20) days before said date of public hearing. Notice of the hearing shall also be mailed to owners of property within five hundred (500) feet of the legal boundaries of the land to be affected by the application. Failure of the Board to notify all property owners by mail as described above shall not invalidate any action taken by the Board, provided such failure was unintentional.

4. The Board of Adjustment shall take action on said application within sixty (60) days following the date of application.

5. No application for a variance shall be resubmitted for a period of three (3) months from the date of order of denial.

Subd. 5. *Amendments.*

A. The Board of Supervisors may from time to time, on its own action or on petition by owner(s) or authorized agent of the property affected, after public notice and hearings as provided by law and after report by the County Planning and Zoning Commission, amend, supplement or change the boundaries or regulations herein or subsequently established, and such amendment shall not become effective except by the favorable vote by a majority of all the members of the Board of Supervisors.

B. *Application for Amendment.*

1. The applicant for a zoning amendment shall complete and submit to the Zoning Administrator a zoning amendment application form and all supplemental information described therein. A twenty-five (25) dollar application fee shall be submitted by the applicant at the time of application.

2. The Zoning Administrator shall refer said application to the Zoning Commission for review.

3. The Zoning Commission shall hold a public hearing on the application within sixty (60) days of receiving said application. Notice of the public hearing shall be published in an official newspaper or a newspaper of general circulation at least four (4) days and not more than twenty (20) days before said date of public hearing. Notice of the hearing shall also be mailed to owners of property within five hundred (500) feet of the legal boundaries of the land to be affected by the application.

4. The Zoning Commission shall forward said application and their recommendations to the County Board of Supervisors at which time the County Board of Supervisors shall schedule a public hearing. The public hearing shall be held on the application within thirty (30) days of receipt of said application. Notice of the hearing shall be published in an official newspaper or in a paper of general circulation at least four (4) days and not more than twenty (20) days before said date of hearing. Notice of hearing shall also be mailed to owners of property within five

hundred (500) feet of the legal boundaries of the land to be affected by the application. Failure of the Board of Supervisors to notify all property owners by mail as described above shall not invalidate any action taken by the Board, provided such failure was unintentional.

5. Approval or denial of said application shall require a two-thirds (2/3) vote of all the members of the County Board of Supervisors.

6. No application for a zoning amendment shall be resubmitted for a period of six (6) months from the date of said order of denial.

7. The County Board of Supervisors may impose a time limit within which time the rezoned property must be used or developed according to its new zoning classification. If the property is not used or developed within said time period, the County Board of Supervisors may, upon fourteen (14) days notice to the owner of record, revert said property to its previous zoning classification.

Subd. 6. *Zoning Permits.*

A. No land shall be occupied or used, and no building hereafter erected or structurally altered shall be occupied or used in whole or in part for any purpose whatsoever, until a certificate is issued by the Zoning Administrator stating that the building and use comply with the provisions of this Ordinance, provided however, that no permit shall be required for agricultural uses.

B. No change of use shall be made in any building or part thereof, now or hereafter erected or structurally altered, without a permit being issued

therefore by the Zoning Administrator. No permit shall be issued to make a change unless the changes are in conformity with the provisions of this Ordinance.

C. Nothing in this p[illegible]ll prevent the continuance of a noncon[illegible]ing use as hereinbefore authorized, unless [illegible]ontinuance is necessary for the safety of life or property.

D. Written application on approved forms shall be filed with the Zoning Administrator and shall be accompanied by plans in duplicate and drawn to scale, showing the actual shape and dimensions of the lot to be built upon or to be changed in its use, in whole or in part; the exact location, size and height of any building or structure to be erected or altered; the existing and intended use of each building or structure or part thereof; the number of families or dwelling units the building is designed to accommodate; and when no buildings are involved, the location of the present use and the proposed use to be made of the lot, and such other information with regard to the lot and neighboring lot as may be necessary to determine and provide for the enforcement of this Ordinance.

One (1) copy of such plans shall be returned to the owner when such plans shall have been approved by the Zoning Administrator, together with such Zoning Certificate as may be granted. All dimensions shown on these plans relating to the location and size of the lot to be built upon shall be based on actual survey.

E. The lot and the location of the building thereon or the proposed improvements shall be staked out on the ground before construction is started.

F. No permit for the excavation for, or the erection or alteration of any building shall be issued before an application has been made for a Zoning Permit, and no building or premises shall be occupied until that certificate is issued.

G. Zoning Permits issued in accordance with the provisions of this section shall be null and void at the end of six (6) months from the date of issue if the construction, alteration, or change of use has not commenced during the six (6) month period. Proposed construction or alteration must be completed within eighteen (18) months.

SECTION 12: VIOLATION AND PENALTY

Any person, firm, or corporation who violates, disobeys, omits, neglects or refuses to comply with the provision of this Ordinance shall, upon conviction, be fined not more than one hundred (100) dollars or imprisoned for not more than thirty (30) days for each offense, and each day a violation is permitted to exist shall constitute a separate offense.

SECTION 13: VALIDITY

Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

SECTION 14: EFFECTIVE DATE

This Ordinance shall be effective from and after the date of its adoption as provided by law.

THE FOREGOING ORDINANCE IS ADOPTED PURSUANT TO IOWA CODE

SECTION 331.302 THIS 9TH DAY OF MAY, 1988.

MONROE COUNTY, IOWA

BY /s/ Billy K. Myers
Billy K. Myers
Chairman
Board of Supervisors

ATTEST:

/s/ Catharine M. Brothers
Catharine M. Brothers
Auditor
Monroe County, Iowa

BY /s/ Helen Sinclair
Helen Sinclair
Member
Board of Supervisors

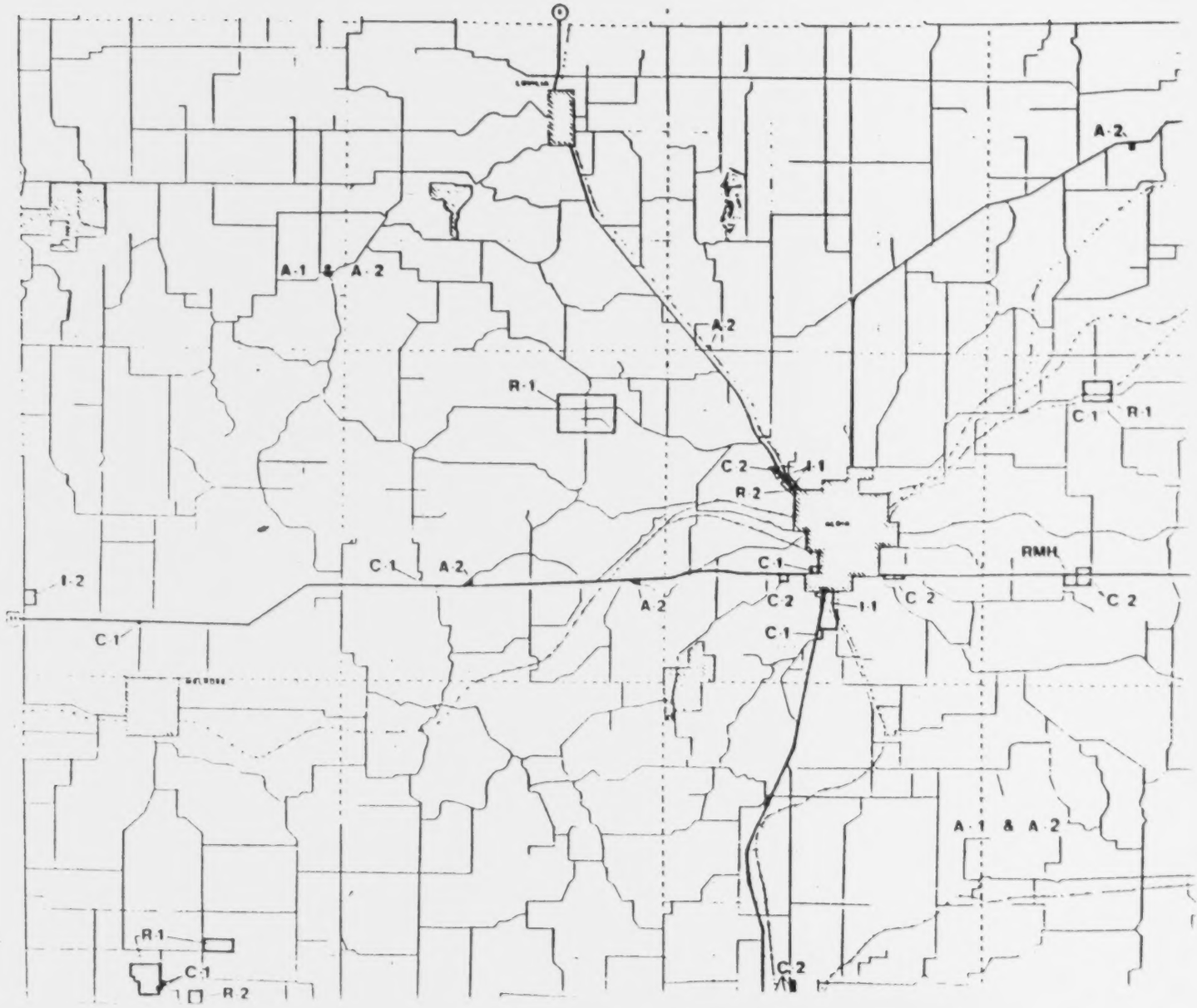
BY /s/ - absent -
Raymond Vance
Member
Board of Supervisors

* * *

Read First Time and Passed	April 29, 1988
Read Second Time and Passed	May 2, 1988
Final Reading and Passage	May 9, 1988
Date of Publication	May 10, 1988

MONROE COUNTY, IOWA

OFFICIAL ZONING MAP



BEST AVAILABLE COPY

THE FOREGOING ORDINANCE IS ADOPTED PURSUANT TO IOWA CODE SECTION 331.302 THIS 9th DAY OF MAY, 1988.

MONROE COUNTY, IOWA

BY /s/ Billy K. Myers
Billy K. Myers
Chairman
Board of
Supervisors

BY /s/ Helen Sinclair
Helen Sinclair
Member
Board of
Supervisors

BY /s/ - absent -
Raymond Vance
Member
Board of
Supervisors

ATTEST:

/s/ Catharine M. Brothers
Catharine M. Brothers
Auditor
Monroe County, Iowa

* * *

Read First Time and Passed April 29, 1988

Read Second Time and Passed May 2, 1988

Final Reading and Passage May 9, 1988

Date of Publication May 10, 1988

SUPERVISORS' MINUTES

PROCEEDINGS

June 16, 1989

FILE NO. 1687
BOOK 209 PAGE 329
1990 JUN 21 PM 3:34
$ NONE
MARY LOU RINEHART
RECORDER
MONROE COUNTY, IOWA

8:30 a.m. the time set for a public hearing on the final report of the Monroe County Zoning Commission concerning an application for rezoning by Moravia Lumber Co., Inc., Route 1, Box 356, Moravia, Iowa.

Tract proposed for rezoning from A1/A2 Classification to I1 Classification for use of lumber storage, dry kiln and sawmill approximately 18 acres:

> Beginning at a point 330.0 ft. W of the SE Corner of SE¼ SW¼ of Sec. 33, T71N, R17W of 5th P.M., Monroe Township, Monroe County, Iowa; thence W967.0' to E right-of-way fence line of the Norfolk Western Railroad; thence in a northerly direction along a 11510 foot radius curve concaved easterly a distance of 703.0 ft. along said right-of-way line; thence E 1322.0 ft.; thence S 0° 36' E 567.0 ft.; thence W 300.0 ft.; thence S 0° 36' E 130.0 ft. to place of beginning, subject to easements of record. EXCEPT all of the N 253.0 ft. of the S 383.0 ft. of the E 300.0 ft. of the SE¼ SW¼ of Sec. 33, T71N, R17W of the 5th P.M., of Civil Township Monroe, of MOnroe County, Iowa, containing 1.74 acres.

Terry Spurgin present.

The recommendation and findings of the Monroe county Zoning Commission were:

That the change is supported by the adopted Land Use Plan, that the change would not severely impact traffic, public facilities of the area or significantly alter population density, that the change is consistent with the purpose with which zoning is adopted, the change would not constitute spot zoning, the change is supported by adopted land use patterns, there are not adequate sites properly zoned available elsewhere to accommodate the proposed use, the proposed use is not out of proportion to the scale of the needs of the community,
The proposed use is not precedent setting, the proposed boundary is appropriate and there is a possibility that in the original zoning classification there were underlying factors with the Moravia Industrial Development group which we were not aware. There are not substantial reasons why the property could not be zoned industrial. This motion is made that we present this recommendation to the Board of Supervisors for adoption.

Motion by Myers and seconded by Beary there being no oral or written objections to close the public hearing at 8:40 a.m.

All members voted "AYE". – Motion Carried.

Motion by Myers and seconded by Beary to accept the recommendation of the Monroe County Zoning Commission and to rezone the following described property owned by the Moravia Lumber Co., Inc., from A1/A2 Classification to I1 Classification:

Beginning at a point 330.0 ft. W of the SE Corner of SE¼ SW¼ of Sec. 33, T71N, R17W of 5th P.M., Monroe Township, Monroe County, Iowa; thence W967.0 ft. to E right-of-way fence line of the Norfolk Western Railroad; thence in a northerly direction along a 11510 foot radius curve concaved easterly a distance of 703.0 ft. along said right-of-way line; thence E 1322.0 ft.; thence S 0° 36' E 567.0 ft.; thence W 300.0 ft.; thence S 0° 36' E 130.0 ft. to place of beginning, subject to easements of record. EXCEPT all of the N 253.0 ft. of the S 383.0 ft. of the E 300.0 ft. of the SE¼ SW¼ of Sec. 33, T71N, R17W of the 5th P.M., of Civil Township Monroe, of Monroe County, Iowa, containing 1.74 acres.

All members voted "AYE". – Motion Carried.

Meeting adjourned.

/s/ Helen Sinclair
HELEN SINCLAIR,
Chairman

ATTEST: /S/ Catharine H. Brothers
CATHARINE H. BROTHERS,
Co. Auditor

[SEAL]

Record of Zoning Reclassification
from Supervisor's Minute Book 15, Page 475
STATE OF IOWA, MONROE COUNTY, SS

EXCERPT OF MINUTES

Meeting of Monroe County Board of Supervisors

A special meeting of the Monroe County Board of Supervisors was held on the 5th day of March, 1990 at 8:30 a.m. in the Board Room of the Monroe County Courthouse, Albia, Monroe County, Iowa pursuant to a written agenda posted at least 24 hours in advance, and a copy of which is attached hereto and incorporated by this reference.

The meeting was called to order by Billy K. Myers, who presided. The following Supervisors were present: Billy K. Myers, Helen Sinclair, Michael R. Beary.

During the said meeting the following business was transacted:

Upon Motion made by Supervisor Sinclair, and seconded by Supervisor Beary, the following action was taken:

FILE NO. 1240
BOOK 217 PAGE 200

90 MAR 22 AM 11:46
$ None
MARY LOU RINEHART
RECORDER
MONROE COUNTY, IOWA
To accept the recommendation of the Monroe County Zoning Commission to rezone the following described property owned by National Bank and Trust Company of Chariton leased by John A. McGee from C-1 Classification to C-2 Classification: NW Part S1/2 NE1/4 SE1/4 33-71-19 200' x 435' The foregoing motion was adopted on the following Vote:

Yes: Billy K. Myers
Helen Sinclair
Michael R. Beary

No:

It is the practice of the undersigned to take notes of all actions of the Board of Supervisors during its meetings, to prepare minutes of the same, and to keep those records. The full minutes of the above meeting are contained within the records of the Board of Supervisors in the Monroe County Auditor's office, Monroe County Courthouse, Albia, Iowa.

The foregoing is hereby certified to be an accurate statement of what occurred during a portion of the meeting held on the date specified

* * *

(Picture) *Monroe County Board of Supervisors*

Albia, Iowa 52531 (515) 932-7706

March 2, 1990

NOTICE TO GENERAL PUBLIC

Pursuant to Chapter 12, 1989 Code of Iowa, you are hereby notified of the following meeting of the below-named body in open session.

The Monroe County Board of Supervisors will meet in their office, Monroe County Courthouse, on Monday, March 5, 1990, at 8:30 a.m.

TENTATIVE AGENDA

1. 8:30 a.m. – Public Hearing of John A. McGee application for rezoning from C-1 classification to C-2 classification in Section 33-71-19

   – Authorize chairman to negotiate comp time with Sheriff's Department

   – Examine and allow claims

   – Re-appoint County Planning and Zoning Commission

/s/ Billy K. Myers
BILLY K. MYERS, Chairman
Monroe County Board of Supervisors
Courthouse – Albia, Iowa 52531

IN THE IOWA DISTRICT COURT FOR
MONROE COUNTY

IOWA COAL MINING COMPANY, INC., STAR COAL MINING COMPANY, INC., and JIM HUYSER, Plaintiffs, v. WILLIAM MYERS, RAYMOND VANCE, HELEN SINCLAIR, THE BOARD OF SUPERVISORS OF MONROE COUNTY, IOWA and MONROE COUNTY, IOWA, Defendants.	NO. CL 54-0588 CL 1-54 PETITION FOR WRIT OF CERTIORARI, DECLARATORY RELIEF AND TEMPORARY INJUNCTION

DIVISION I
PETITION FOR WRIT OF CERTIORARI

(Filed May 5, 1988)

COME NOW the Iowa Coal Mining Company, Inc., Star Coal Mining Company, Inc. and Jim Huyser, and for their cause of action for issuance of a Writ of Certiorari, state:

1. Plaintiff, Iowa Coal Mining Company, Inc., is a corporation organized and existing under the laws of the State of Iowa and whose principal place of business is situated in Monroe County, Iowa.

2. Plaintiff, Star Coal Mining Company, Inc., is a corporation organized and existing under the laws of the State of Iowa and whose principal place of business is situated in Monroe County, Iowa.

3. Plaintiff, Jim Huyser, is the president and majority shareholder in Iowa Coal Mining Company, Inc. and in Star Coal Mining Company, Inc.

4. Plaintiffs, at all times material hereto, own and/or lease real property in connection with their business in six (6) separate townships within Monroe County, Iowa, to-wit: Cedar Township, Union Township, Bluff Creek Township, Troy Township, Gulford Township and Mantua Township.

5. Defendants, William Myers, Raymond Vance and Helen Sinclair are the duly elected, qualified and acting members of the Board of Supervisors for Monroe County, Iowa. These Defendants individually and collectively herein are hereinafter referred to as "Monroe County".

6. The Defendant, Monroe County, Iowa, is a county duly organized and existing pursuant to the laws of the State of Iowa.

7. Monroe County has never enacted a county-wide zoning ordinance for Monroe County, Iowa.

8. Monroe County is now attempting to enact a zoning ordinance which would zone all of Monroe County, Iowa, which attempt is the subject matter of this litigation. A copy of the proposed zoning ordinance is attached hereto, marked Exhibit "A", and by this reference made a part hereof.

9. Monroe County lacks the jurisdiction to enact said ordinance and the attempt to enact the same is illegal and is in excess of the authority of Monroe County, Iowa, in that Monroe County has failed to comply with §§ 358A.5 and 358A.6, Code of Iowa (1987) as amended.

10. Monroe County lacks jurisdiction to enact said ordinance and the attempt to enact the same is illegal and is in excess of the authority of Monroe County, Iowa, in that said ordinance deprives the Plaintiffs of their only legitimate use of the property without due process and without making any provision for compensation to the Plaintiffs for the taking of said property in violation of the Constitution of the State of Iowa and United States Constitution.

11. The sole purpose of the enactment of the proposed zoning ordinance is to deny Plaintiffs the right to the only legitimate use of their property and Defendants' actions substantially and irreparably damage the Plaintiffs' business interest and property without making any provisions for compensation to the Plaintiffs for the taking of said property, in violation of the Constitution of the State of Iowa and United States Constitution.

12. The efforts of Monroe County to enact said ordinance is arbitrary, capricious, unjust and unreasonable, and is an unlawful appropriation of the Plaintiffs' property without due process of law and in violation of the Constitution of the State of Iowa and United States Constitution.

13. Monroe County has acted in excess of its jurisdiction and in violation of the laws of the State of Iowa, and Plaintiffs have no plain, speedy or adequate remedy.

14. By reason of said premises, the Plaintiffs are entitled to a Writ of Certiorari, commanding the Defendants to produce records and transcripts of their proceedings for the Court to review and to an order herein setting aside the wrongful acts of Monroe County as they relate to the proposed zoning ordinance.

WHEREFORE, Plaintiffs pray that a Writ of Certiorari issue from the District Court of Iowa in and for Monroe County; that an order be entered herein setting aside and annulling the attempted enactment of the proposed County Zoning Ordinance and that said proposed ordinance be declared to be a nullity and of no force and effect whatsoever, and that Plaintiffs, individually and collectively, be awarded damages as prayed for herein, with the costs of this action to be taxed to the Defendants.

DIVISION II
PETITION FOR DECLARATORY RELIEF

COME NOW the Plaintiffs, Iowa Coal Mining Company, Inc., Star Coal Mining Company, Inc., and Jim Huyser, and for their Petition for Declaratory Relief as against the named Defendants, being the duly elected, qualified and acting members of the Monroe County Board of Supervisors, and Monroe County, Iowa, (hereinafter "Monroe County") state in the alternative as follows:

1. Plaintiffs incorporate Paragraphs 1-11 of Division I as if fully set forth herein.

2. At all times material hereto the Defendants had no evidence before them which justified or demonstrated

that zoning would substantially further the public health, safety and welfare of Monroe County, Iowa or its inhabitants. Furthermore, Defendants made no comprehensive plan as required by § 358A.5 of the Code of Iowa.

3. There has been no change in any of the property owned and/or controlled by the Plaintiffs which would warrant zoning to protect the public health, safety and welfare of the inhabitants of Monroe County, Iowa.

4. The enactment of the proposed zoning ordinance attached hereto, marked Exhibit "A", and by this reference made a part hereof, will arbitrarily and unreasonably change the existing character of the property owned and controlled by the Plaintiffs, and will destroy the desirability and value of the property.

5. The proposed zoning ordinance is unconstitutional, illegal, null and void in that it constitutes an instance of arbitrary and unreasonably spot zoning, bears no substantial relationship to the public health, safety and welfare of the inhabitants of Monroe County, Iowa, and is detrimental thereto and has no affect other than to deprive Plaintiffs and other property owners of the rights, values and privileges in and to their properties.

6. The enactment of the proposed ordinance deprives the Plaintiffs of their property without making any provision for compensation for the taking of said property in violation of the Constitution of the State of Iowa and the United States Constitution.

7. The proposed zoning ordinance will be enacted for the sole purpose and benefit of depriving Plaintiffs of

the only legitimate use of their property and would constitute a taking of their property in violation of the Constitution of the State of Iowa and the United States Constitution.

8. The enactment of the proposed zoning ordinance would substantially injure the business interest of the Plaintiffs, and would arbitrarily, unjustly and unreasonably take the Plaintiffs' property without due process of law.

9. Plaintiffs assert that their [sic] is no plain, speedy or adequate remedy available.

10. The attempts by the Defendants to illegally enact the proposed zoning ordinance constitutes a controversy between the parties sufficient to give this Court jurisdiction pursuant to Rule 261 of the Iowa Rules of Civil Procedure, to declare the rights, status and other legal relations between the parties.

11. This Court has jurisdiction to render judgment in favor of the Plaintiffs in accordance with Rule 266 of the Iowa Rules of Civil Procedure, and the Plaintiffs risk irreparable injury unless granted the relief sought herein.

WHEREFORE, Plaintiffs pray that the Court enter judgment declaring the enactment of the proposed zoning ordinance in Monroe County, Iowa, to be null, void and of no force or effect, and award the Plaintiffs damages as prayed for herein, the costs of this action, and for such other, further and equitable relief as the Court deems just and proper.

DIVISION III
REQUEST FOR TEMPORARY RESTRAINING ORDER

COME NOW the Plaintiffs, Iowa Coal Mining Company, Inc., Star Coal Mining Company, Inc. and Jim Huyser, and in support of their Request for a Temporary Restraining Order, submit to the Court as follows:

1. Plaintiffs incorporate by reference Paragraphs 1-14 of Division I as if fully set forth herein.

2. Plaintiffs incorporate by reference Paragraphs 1-11 of Division II as if fully set forth herein.

3. On May 9, 1988, the Defendants intend to enact the proposed zoning ordinance which is attached hereto, marked as Exhibit "A", and by this reference made a part hereof.

4. The Defendants have failed to comply with the necessary statutory requirements in enacting said zoning ordinance and they lack jurisdiction to enact said ordinance and said ordinance is illegal.

5. The proposed zoning ordinance would substantially injure the business interest of the Plaintiffs and would allow for the taking of the Plaintiffs' property without making any provision for compensation and without due process of law, in violation of the Constitution of the State of Iowa and the United States Constitution.

6. Plaintiffs have no adequate remedy at law for the harm or damage done to their property interest by the Defendants by the enactment of the proposed zoning ordinance because the proposed zoning ordinance would

arbitrarily, unjustly and unreasonably destroy the business interest of the Plaintiffs, and further, the Defendants lack jurisdiction and the proposed zoning ordinance is illegal.

7. The Court should enjoin the Defendants from taking any further steps to enact the proposed zoning ordinance to preserve the status quo between the parties while such action is pending.

8. Plaintiffs will suffer irreparable harm, damage and injury unless the acts and conduct of Defendants above complained of are enjoined.

9. Plaintiffs state and certify that a petition for the relief requested herein has not been presented and refused by any other court or justice, and that the Court should issue a temporary injunction and the Plaintiffs are willing to file a bond in an amount set by the Court.

WHEREFORE, Plaintiffs pray for a temporary injunction which will enjoin the Defendants, William Myers, Raymond Vance, Helen Sinclair, The Board of Supervisors of Monroe County, Iowa and Monroe County, Iowa, from performing any acts which would allow for the enactment of the proposed zoning ordinance for Monroe County, Iowa, for costs and expenses incurred in this action and for such other and further relief as is deemed appropriate.

CONNOLLY, O'MALLEY, LILLIS, HANSEN & OLSON

By /s/ William J. Lillis
William J. Lillis

By /s/ Daniel L. Manning
Daniel L. Manning
820 Liberty Building
Des Moines, Iowa 50309
Telephone: (515) 243-8157

ATTORNEYS FOR PLAINTIFFS

STATE OF IOWA)
) ss
COUNTY OF POLK)

I, Randy Luwe, being first duly sworn, upon oath, depose and state that I am the Vice President of Iowa Coal Mining Company, Inc. and Star Coal Mining Company, Inc., Plaintiffs in the above and foregoing cause of action; that I have read the statements contained in the foregoing Petition for Writ of Certiorari, Declaratory Relief and Temporary Injunction said statements are true and correct as I verily believe.

/s/ Randy Luwe
Randy Luwe

Subscribed and sworn to before me by Randy Luwe this 4th day of May, 1988.

/s/ Daniel L. Manning
Notary Public in and for the
State of Iowa

IN THE IOWA DISTRICT COURT FOR
MONROE COUNTY

IOWA COAL MINING COMPANY, INC., STAR COAL MINING COMPANY, INC., and JIM HUYSER,	)	NO. _____
Plaintiffs,	)	ATTORNEY FEE AFFIDAVIT
v.	)	
WILLIAM MYERS, RAYMOND VANCE, HELEN SINCLAIR, THE BOARD OF SUPERVISORS OF MONROE COUNTY, IOWA and MONROE COUNTY, IOWA,	)	
Defendants.	)	

STATE OF IOWA)
) ss
COUNTY OF POLK)

I, William J. Lillis, of the firm of Connolly, O'Malley, Lillis, Hansen & Olson, 820 Liberty Building, Des Moines, Iowa, being first duly sworn upon oath depose and state that I am one of the attorneys for the Plaintiffs in this case; that I am a practicing attorney engaged in this case; that there has been no agreement, express or implied, between myself and my client, or between myself and any other person, except attorneys associated with me in this case of the law firm of Connolly, O'Malley, Lillis,

Hansen & Olson, for any sharing or division of the attorney fee to be taxed herein.

/s/ William J. Lillis
William J. Lillis

Subscribed and sworn to before me this 4th day of May, 1988, at Des Moines, Polk County, Iowa.

/s/ Daniel L. Manning
Notary Public in and for the State of Iowa

IN THE IOWA DISTRICT COURT FOR MONROE COUNTY

IOWA COAL MINING COMPANY, INC., STAR COAL MINING COMPANY, INC., and JIM HUYSER,	)	NO. _____
Plaintiffs,	)	ATTORNEY FEE AFFIDAVIT
v.	)	
WILLIAM MYERS, RAYMOND VANCE, HELEN SINCLAIR, THE BOARD OF SUPERVISORS OF MONROE COUNTY, IOWA and MONROE COUNTY, IOWA,	)	
Defendants.	)	

STATE OF IOWA)
) ss
COUNTY OF POLK)

I, Daniel L. Manning, of the firm of Connolly, O'Malley, Lillis, Hansen & Olson, 820 Liberty Building, Des Moines, Iowa, being first duly sworn upon oath depose and state that I am one of the attorneys for the Plaintiffs in this cause; that I am a practicing attorney engaged in this case; that there has been no agreement, express or implied, between myself and my client, or between myself and any other person, except attorneys associated with me in this case of the law firm of Connolly, O'Malley, Lillis, Hansen & Olson, for any sharing or division of the attorney fee to be taxed herein.

/s/ Daniel L. Manning
Daniel L. Manning

Subscribed and sworn to before me this 4th day of May, 1988, at Des Moines, Polk County, Iowa.

/s/ Illegible
Notary Public in and for the
State of Iowa

Supreme Court, U.S.
FILED
APR 30 1993
OFFICE OF THE CLERK

No. 92-1592

In The

Supreme Court of the United States

October Term, 1992

IOWA COAL MINING COMPANY, INC.;
STAR COAL MINING COMPANY, INC.;
and JIM HUYSER,

Petitioners,

v.

THE BOARD OF SUPERVISORS OF MONROE COUNTY, IOWA; and MONROE COUNTY, IOWA,

Respondents,

IDF ACQUISITION CORP.,

Intervenor,

FIRST STATE INSURANCE COMPANY,

Amicus Curiae.

Petition For Writ Of Certiorari To The Supreme Court Of Iowa

RESPONDENTS' BRIEF IN OPPOSITION

LEE H. GAUDINEER
(Counsel of Record)
Spec. Assist. Co. Atty.
AUSTIN, GAUDINEER, AUSTIN,
SALMONS & SWANSON
900 Des Moines Building
Des Moines, IA 50309
(515) 243-5750

ANNETTE J. SCIESZINSKI
Spec. Assist. Co. Atty.
SCIESZINSKI & OWENS
13 S. Clinton
Albia, IA 52531
(515) 932-7577

Attorneys for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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CONSTITUTIONAL PROVISIONS AND STATUTES

The Constitutional Questions I and II framed by the Petitioners for review appear to be a broad-based, facial Constitutional attack upon the validity of the zoning ordinance.[1] This also appears to be the issue raised in the Petition filed in the Iowa District Court. If this is the Petitioners' contention, it has failed. The Iowa Supreme Court gave the Petitioners the benefit of the doubt and evaluated their attack under the *ad hoc* three-factor approach of *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631, 648 (1978) or: (1) the economic impact of the regulation on the Claimants' property; (2) the regulation's interference with investment-backed expectations; and (3) the character of the governmental action.

The following Iowa statutes and provisions of the zoning ordinance factor into this Constitutional analysis:

1. Section 335.5, *Iowa Code*, 1993 (formerly Section 358A.5, *Iowa Code*).

> "The regulations shall be made in accordance with a comprehensive plan and designed to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion in the street or highway; to secure safety from fire,

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[1] In a facial Constitutional attack, the Petitioner has the burden of proof to negate all possible legitimate applications of the law. This is a heavy burden. *Keystone Bituminous Coal Ass'n. v. DeBenedictis*, 480 U.S. 470, 502, 107 S.Ct. 1232, 1250, 94 L.Ed.2d 472 (1987).

flood, panic, and other dangers; to protect health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. However, provisions of this section relating to the objectives of energy conservation and access to solar energy shall not be construed as voiding any zoning regulation existing on July 1, 1981, or to require zoning in a county that did not have zoning prior to July 1, 1981.

Such regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such county."

2. Section 2, Ordinance 6. (Pet. App. 93a-94a).

"The purpose of this Ordinance is to promote public health, safety, comfort and general welfare; to conserve and protect property values; to encourage the most appropriate use of land through orderly development to conserve and protect our natural resources; to facilitate adequate but economical provisions for public improvements; and to protect private property rights, all in accordance with and as permitted by the provisions of Chapter 358A. Code of Iowa (1987)."

3. Section 6, Subd. 4, Ordinance 6. (Pet. App. 123a).

> "Intent: The A-1 Agricultural District is intended and designed to serve the agricultural community and protect prime agricultural land from encroachment of urban land uses. This district is not intended to be used for non-farm residential developments, governmental facilities, or commercial businesses."

(Principal permitted uses were listed as farms; breeding of mink, chinchilla, etc.; truck gardens, orchards, and wholesale nurseries; forest and wildlife preserves; sod farms; single family homes on existing parcels of less than 15 acres; and public parks. Conditional uses were listed as livestock and poultry feedlots; commercial microwave, radio and television towers; public buildings; churches; cemeteries; temporary facilities for music, sports, commercial exhibitions and carnival events; stables; and mining.)

4. Section 6, Subd. 5, Ordinance 6. (Pet. App. 127a).

> "Intent: The A-2 Agricultural district is intended and designed to provide for those activities which are strongly interrelated with agricultural uses and must therefore be located in agricultural areas."

(Principal permitted uses were listed as any principal use listed in A-1; stables, riding academies, and structures for housing animals or fowl; grain elevators; public buildings; livestock feed and grain sales; animal hospitals and veterinary clinics; and seed sales. Conditional uses were listed as anhydrous ammonia storage and pumping

facilities; fertilizer and agricultural chemicals; commercial feedlots; commercial microwave, radio, and television towers; churches; cemeteries; temporary facilities for music, sports, commercial exhibitions, and carnival events; temporary asphalt and concrete mixing plants; private non-commercial landing fields; golf courses; salvage yards; and mining.)

5. Section 455B.302, *Iowa Code*, 1993, effective July 1, 1987. (Requires counties to establish and operate waste reduction programs and regulate and inspect private sanitary landfills.)

6. Section 455B.301A, *Iowa Code*, 1993, effective July 1, 1988. (Establishes a hierarchy of solid waste disposal, with landfills the least desirable.)

7. Section 455B.306, *Iowa Code*, 1993, effective July 1, 1988. (Requires detailed comprehensive plan of disposal of all waste and its impact upon the environment.)

8. Section 455E.10, *Iowa Code*, 1993, effective July 1, 1988. (Requires counties to adopt and implement ground water protection policies.)

9. Section 455D.3, *Iowa Code*, 1993, effective July 1, 1989. (Requires counties to reduce waste at its source with a goal of 25% reduction by July 1, 1994, and 50% by July 1, 2000.)

STATEMENT OF THE CASE

Petitioners ask that this Court retry the facts found by the Iowa Supreme Court.[2] This Court generally will not re-examine a state court's findings and conclusions of law. *Grayson v. Harris*, 267 U.S. 352, 358, 45 S.Ct. 317, 319, 69 L.Ed. 652 (1925); and *Lloyd A. Fry Roofing Co. v. Wood*, 344 U.S. 157, 160, 73 S.Ct. 204, 206, 97 L.Ed. 168 (1952). The Iowa Supreme Court decision turned upon the Court's analysis of the particular facts involved; that analysis is generally not reviewable upon certiorari. *Texas v. Mead*, 465 U.S. 1041, 1042-43, 104 S.Ct. 1318, 1319-20, 79 L.Ed.2d 714 (1984).

Petitioners continually cite facts as found by the Trial Court.[3] Nowhere do they cite the facts as found by the Iowa Supreme Court. For this reason, the Respondents cannot accept Petitioners' Statement of the Case.

Sometime in 1987, a member of the Monroe County Board of Supervisors proposed that zoning should be considered. Concerns were expressed over the proliferation of junk yards, feedlots, and other uses at random places within the County. After much discussion, on October 27, 1987, the Area XIV Regional Planning Commission was retained to make recommendations concerning a Comprehensive Zoning Ordinance. The Regional

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[2] Pet. App. 8a and 494 N.W.2d at 668: "The existence of a Constitutional issue requires us to review *de novo* the evidence bearing on that claim."

[3] For example, see Petition for Certiorari, at pages 8, 9, 10, 11, 12, 15, 16, 17, 20, 21, and 25. The overwhelming weight of the evidence introduced at trial established the facts as found by the Iowa Supreme Court.

Planning Commission had previously undertaken several studies of counties in its area, of which Monroe County was one.

Monroe County comprises 278,400 acres or 435 square miles. In 1980 its population was 9,209, with 4,165 people living in the unincorporated area. Its total labor force was approximately 4,074. 659 people were employed in agriculture; 15 in mining; 217 in construction; 921 in manufacturing; 158 in transportation; 172 in wholesale trade; 593 in retail trade; 81 in finance; 855 in services; and 125 in government. It had approximately 3,510 houses county-wide, with 1,732 in the rural area. Medium value of its dwellings was $26,700. These statistics have not appreciably changed since 1980.

The County's land was found to be a rolling demography, with approximately 20% in timber. 1.06% of the County was incorporated; 23.64% was high-quality agricultural land; 54.76% was low-quality agricultural land; 1.14% comprised public facilities; 15.96% was in private, open spaces; .02% was commercial; .92% was industrial; .23% was residential; and 2.25% was devoted to transportation.

The development policies of the County were stated to be: (1) preserve high-quality agricultural land, because that will be the primary industry; (2) future residential/commercial/industrial development should be encouraged to locate in areas where public services are available; (3) existing lots and structures should be filled; and (4) to make the most of existing transportation routes, commercial and industrial development should be encouraged to locate on adequate paved roads. These

recommendations also noted that the area had problems with shortages of job opportunities for college graduates, out-migration of the young, an aging population, a need for elderly housing, and a need for rehabilitation of existing housing. Agriculture and manufacturing were found to be the County's primary industries.

Iowa cities and counties were required in 1972 to establish solid waste landfills by 1975. There were no environmental requirements. Generally, each municipality established its own landfill. National concerns developed in the 1980s over the environment and contamination of the ground water. This led to the adoption of federal legislation requiring state regulation of pollutants and contaminants. In Iowa, this resulted in the enactment of the *Ground Water Protection Act* of 1987 (now Section 455B.301, *et seq.*, *Iowa Code*, 1993), placing expensive requirements on landfills. In subsequent years, small landfills would be required to incur this expense if they wished to remain open. Sections 455B.305 and 455B.306, *Iowa Code*, 1993. Counties were encouraged to consolidate their landfills, because the cost to meet these new requirements would be less per ton of solid waste if the amount of waste deposited was increased.

As part of this legislation, counties were required to either operate or regulate landfills. Section 455B.302, *Iowa Code*, 1993. Monroe County, on September 17, 1987, responded to this state mandate by adoption of Ordinance No. 4, which provided for regulation of private landfills, including the posting of a $1,000,000 bond.

(Resp. App. 1 and 5).[4] Monroe County, in conjunction with adjacent counties, participated in several public meetings to discuss a joint response to this state mandate. The County was part of a state-financed study of regional waste-disposal consolidation conducted by Clapsaddle & Associates, Inc.[5] Zoning was considered a desirable "tool" to aid in this regulation, as well as providing guidance for other land uses.

It is against this backdrop that Petitioners decided on July 1, 1987, to "convert" a planned coal mine, Star 14, to a solid waste landfill, to be a "central depository" to "take over" the governmental function of waste disposal. Section 331.441(2)(b)(3), *Iowa Code*, 1993.

Petitioners commenced their exploratory drilling for Star 14, needed to file their application for a strip mining permit for coal, on April 22, 1986. (Resp. App. 15). Leases to extract only coal were obtained in May of 1986. (Resp. App. 15). The application for a permit to strip mine for coal was submitted to the State of Iowa on April 17, 1987. (Resp. App. 15). On July 1, 1987, it was suggested to Petitioners that because of the Iowa Ground Water Act, they may want to consider establishing a regional landfill. Amendments to the original coal mining leases were

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[4] Petitioners ignore the mandate of this ordinance, as well as the requirements placed upon Monroe County by Section 455B.302 and Chapter 455D, *Iowa Code*, 1993.

[5] Monroe County did participate in public meetings with other cities and counties to discuss the possibility of establishing a landfill for all at a central location. Everyone who desired was permitted to address their elected representatives. How exercise of this First Amendment guarantee can be transformed into a "vicious attack" is unknown. (Petition, p. 9.)

obtained, at no extra cost, in August of 1987 to permit solid waste landfilling. (Resp. App. 15 and 22-27). Petitioners, with the knowledge that a zoning ordinance was under study, commenced drafting their application for a landfill permit on November 2, 1987. (Resp. App. 17). This application was submitted to the State of Iowa on January 19, 1988. (Resp. App. 17). As pointed out by the Iowa Supreme Court's factual findings, Petitioners' efforts to pursue their landfill concept paralleled the County's public zoning proceedings. (Pet. App. 15a and 494 N.W.2d at 671.)

The landfill permit issued to Petitioners several months after their application was filed with the State of Iowa and was limited to municipal solid waste and coal combustion ash from a six-county area which could be expanded, upon application, review, and state approval, to a twenty-county area. It was specifically issued subject to local regulations. (Resp. App. 29).[6] Proper representatives from each of the counties targeted by Petitioners testified at trial that they would not have used Star 14 for their solid waste landfill.[7] At trial, evidence was introduced that the property comprising Star 14 was being used for farming and grazing cattle.

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[6] Again, Petitioners continually assert, erroneously, that there were no other regulations applicable and that they only needed a permit issued by the Iowa Department of Natural Resources. (Petition, pp. 5, 6, 17 n.3, and 20 n. 4).

[7] Petitioners assert, contrary to the evidence and the facts found by the Iowa Supreme Court, that it had customers as of May 1988 to landfill 1,000 tons of waste per day.

Based upon the evidence before the Trial Court, the Iowa Supreme Court found that it was quite clear that the coal leases for Star 14 were acquired in anticipation of strip-mining, and not solid waste disposa1.[8] It found the economic viability of mining Star 14 was only diminished because it had substantial shallow deposits that could be profitably mined. It found that the nature of the regulation of this zoning ordinance was to regulate the health and welfare of the community. It further found that the investment-backed expectations of the Petitioners were for strip-mining coal, and their resources had been committed for this purpose. Lastly, the Iowa Supreme Court found that this ordinance was a reasonable regulation of land use within the county and that Petitioners' claimed destruction of all beneficial use was a result of market conditions for coal and not the zoning regulations. (Pet. App. 14a-16a and 494 N.W.2d at 671). Market conditions affect all businesses, not just the Petitioners'.

In commenting upon the ordinance, the Iowa Supreme Court found that landfilling was placed in the I-2 district because it presented environmental, safety, and road maintenance concerns better accommodated in

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[8] Petitioners continue to claim, contrary to the evidence and the Iowa Supreme Court's findings, that they had spent over $600,000 in preparation to landfill (Petition, p. 6); spent over $300,000 in development of landfilling and royalties (Petition, p. 8); and expended thousands of man hours and hundreds of thousands of dollars in acquiring leasehold rights and preparing Star 14 for landfilling (Petition, p. 24). Not only are these statements inconsistent, there simply is no credible evidence to support these assertions, as found by the Iowa Supreme Court.

a heavy industrial district.[9] (Pet. App. 5a and 494 N.W.2d at 667). It found the ordinance "comprehensive in its scope, uniform in its application to properties having similar qualities and location, and advances community needs ahead of private concerns." (Pet. App. 11a and 494 N.W.2d at 669).

SUMMARY OF ARGUMENT

Ordinance No. 6, the zoning ordinance, is a regulatory ordinance of general application, county-wide. It does not place restrictions on Petitioners' property for the benefit of another specific property owner. Principal uses permitted in one zoning district are prohibited or incorporated in other districts resulting in a rational use of land that promotes the general welfare. Beneficial uses are accorded all land in each district. The three cases relied upon by Petitioners, *Lucas v. South Carolina Coastal Council*, 550 U.S. ___, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992); *Keystone Bituminous Coal Ass'n. v. DeBenedictis*, 480 U.S. 470, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987); and *Whitney Benefits, Inc. v. United States*, 926 F.2d 1169 (Fed. Cir. 1991), cert. denied, ___ U.S. ___, 112 S.Ct. 406, 116 L.Ed.2d 354 (1991), involve laws that prohibit all use of land for which a substantial investment had been made in furtherance of a specific purpose without knowledge that

[9] Petitioners allege, at page 10 of their Petition for Writ of Certiorari, that only a single change was made in the text of the zoning ordinance. However, the trial record discloses that numerous changes were made over several drafts and after much consideration with public input.

a prohibitory law was contemplated. *Lucas* and *Whitney* found a taking under these unusual circumstances, while *Keystone* did not. All three recognized that reasonable restrictions on principal uses found in zoning ordinances, as with the case at bar, do not constitute a taking under the Fifth Amendment. Since no basis for the grant of certiorari has been presented, it should be denied.

REASONS TO DENY THE PETITION

I. PETITIONERS HAVE FAILED TO ESTABLISH THAT THE ZONING ORDINANCE ON ITS FACE EFFECTS A TAKING OR IS A CATEGORICAL TAKING IN VIOLATION OF THE FIFTH AMENDMENT.

Petitioners repeatedly resort to the ruling of the Trial Court to state the facts in their argument. Because Constitutional issues were involved, the Iowa Supreme Court did not accept the Trial Court's fact findings. It reviewed the evidence *de novo* and substituted its own findings of fact, which were considerably different than the Trial Court's.[10] The sole basis for the Petitioners' claim is that they could not use their newly-acquired waste-disposal leaseholds in the manner they desired, regardless of the detrimental impact on surrounding property. Adjacent property had not been put to this use. If Petitioners' contention is valid, it would potentially subject 90% of Monroe County to solid waste landfilling, because 90% of

[10] Ibid 2.

this County is agriculture and zoned A-1 or A-2. Petitioners' contention is the same as saying one should be allowed to construct and operate a cement plant, which is very profitable, in the middle of a residential neighborhood regardless of the impact on surrounding property. As stated by this Court in *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 130, 98 S.Ct. 2646, 2662, 57 L.Ed.2d 631 (1978):

> " . . . the submission that appellants may establish a 'taking' simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development is quite simply untenable."

Exclusion of uses from defined areas or districts does promote the general welfare and is not a taking. *Euclid v. Ambler Realty*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926) (exclusion of industrial use not a taking); *Hadacheck v. Sebastian*, 239 U.S. 394, 36 S.Ct. 143, 60 L.Ed. 348 (1915) (prohibit use as a brick yard, not a taking. "To so hold would preclude development and fix a city forever in its primitive conditions." *Id.* at 410); and *Goldblatt v. Hemstead*, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130 (1962) (mining prohibition).

Petitioners would have this Court decree that each use to which property can be put is a "stick" in the "bundle of rights" comprising the fee title to property. Petitioners then theorize that if one use (stick) is prohibited, compensation is due. Such a holding would reek havoc with initial zoning or rezoning across the nation.

This proposition was rejected by this Court in *Penn Central*, 438 U.S. at 130, 98 S.Ct. at 2662 ("Taking jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated) and *Keystone*, 480 U.S. at 498, 107 S.Ct. at 1248 ("Many zoning ordinances place limits on the property owner's right to make profitable use of some segments of his property").

Lucas did not reverse these holdings. *Lucas* involved a South Carolina law that prohibited construction of any habitable structure on beach-front property. Prior to the enactment of this law, adjacent property had been so developed. Lucas had purchased two beach-front lots, without knowledge that this law was contemplated, two years before its passage. He owned the lots in fee simple and it was this title that this Court evaluated. 550 U.S. at ___, 112 S.Ct. at 2894, n. 7.

The state of South Carolina relied upon the legislative pronouncement that new construction threatened a public resource. 550 U.S. at ___, 112 S.Ct. at 2890. The Trial Court had found that at the time of purchase there were no restrictions and that the total ban on habitable construction rendered the lots valueless. 550 U.S. at ___, 112 S.Ct. at 2890. These findings were not questioned in the state's resistance to the petition for certiorari and were therefore held binding, even though the state later contended they were erroneous. 550 U.S. at ___, 112 S.Ct. at 2896, n. 9. In *Lucas* all of the "sticks" in the "bundle of rights" had been taken (any building, not just one for a specific use). That is not the situation with the case at bar.

Lucas further held that investment-backed expectations are to be evaluated in light of an owner's knowledge that restrictions may be placed upon his property under principles that underlie "the State's law of property." 550 U.S. at ___, 112 S.Ct. at 2894, n. 7. In this case, Petitioners' mining leases pre-dated its landfill leases by more than a year. Petitioners' investment was for strip-mining which remained a conditional use. They obtained solid waste landfilling permission from the fee owners, at no extra cost, in August of 1987. Petitioners knew when they started preparation of their application for a solid waste landfill permit in October of 1987, that zoning was contemplated. It was not until January 15, 1988, long after the planning and zoning process was underway, that their application was filed with the State of Iowa.

Under the property law of Iowa, one who expends money on property improvements knowing of a zoning study and possible adoption of restrictions, proceeds at his peril. *Huff v. City of Des Moines*, 244 Iowa 89, 94, 56 N.W.2d 54, 57 (1952); *Brackett v. City of Des Moines*, 246 Iowa 249, 261, 67 N.W.2d 542, 548 (1954); and *Deardorf v. Bd. of Adj.*, 254 Iowa 380, 389-90, 118 N.W.2d 78, 83 (1962). The petition should be denied.

II. SINCE THE ZONING ORDINANCE DID NOT PROHIBIT ALL BENEFICIAL USE OF THE PROPERTY, A TAKING HAS NOT OCCURRED.

Petitioners, by separate document more than one year after the original coal leases, acquired permission to put Star 14 to another use. They now have construed each use to be a "stick" in the property's "bundle of rights."

They then add the "sticks" together and maintain that these two "sticks" are now the "bundle of rights" comprising this property regardless of the many other permitted and conditional uses allowed under the zoning ordinance.

Petitioners' argument does not here end. They theorize that since late 1987 they had a business plan to replace the coal strip mined with solid waste, any prohibition of this joint use by a zoning ordinance constitutes a taking compensable under the Fifth Amendment. They refused to engage in the beneficial use of strip mining. This is tantamount to a contention that a Fifth Amendment taking occurs when a commercial feedlot is prohibited from raising, slaughtering, and processing livestock from a single location, thereby reducing its yearly profits of $2,000,000 to $1,000,000. This simply is a perversion of the taking jurisprudence.

Petitioners planned only limited coal mining under their joint use plan. Petitioners' evidence at trial was that Star 14 could landfill 1,000 ton of waste per day, 260 days per year, or 260,000 tons per year. 10 tons of waste can be deposited for every ton of coal extracted. Thus, only 26,000 ton of coal would be mined each year. However, the Iowa Supreme Court found that the shallow deposits of coal on Star 14 were profitable deposits that could have been strip mined. (Pet. App. 14a and 494 N.W.2d at 671.)

Another hotly contested issue at trial was the economic viability of Petitioners' new business because of losses associated with its old coal mining business. Its financial statement of assets was questionable. It had experienced a loss of $1.6 million in a failed underground

mining venture; $900,000 in faulty machine repair; $1.2 million when a supplier reduced the price of coal received; and $300,000 from faulty oil. These losses severely undermined Petitioners' ability to remain in business.

Petitioners' application to re-zone the Star 14 property to I-2 was not involved in the ruling of the Trial Court or the decision of the Iowa Supreme Court. The trial record establishes that this application was processed in accordance with the zoning ordinance, which included a hearing and physical inspection of the area by the members of the Plan and Zoning Commission. The request was denied because an I-2 (heavy industrial) district was not compatible with adjacent property zoned A-1 and A-2.

Lastly, the measure of damages, although not reached by the Iowa Supreme Court, was hotly contested. In Iowa, taking damages are the difference between the property value before taking and after; not a speculative assessment of potential profits *ad infinitum*.[11]

The Iowa Supreme Court, giving Petitioners the benefit of the doubt, evaluated their claim under the *ad hoc* approach involving the three factors of (1) economic

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[11] *Thompson v. City of Osage*, 421 N.W.2d 529 (Iowa 1988). If the land was actually being used as claimed by Petitioners, that use could continue as a nonconforming use under the zoning ordinance. Sec. 9, Ordinance 6. (Pet. App. 159a-162a). If a large investment had been made before consideration of zoning was known, that use could have continued under Iowa law as a "vested right." *Bd. of Supr. of Scott County v. Paaske*, 250 Iowa 1293, 1298-99, 98 N.W.2d 827, 831 (1959). Petitioners did not make either of these claims.

impact of the regulation on the Claimant's property; (2) the regulation's interference with investment-backed expectations; and (3) the character of the governmental action. *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124, 98 S.Ct. 2646, 2659; 57 L.Ed.2d 631, 648 (1978). (Pet. App. 13a and 494 N.W.2d at 670). Petitioners' claim fails all three tests. The Petition should be denied.

III. THERE IS NO CONFLICT BETWEEN THE DECISION OF THE IOWA SUPREME COURT AND DECISIONS OF THE UNITED STATES SUPREME COURT OR THE FEDERAL CIRCUIT COURT OF APPEALS.

A. There Is No Conflict With This Court's Decision In *Lucas* And *Keystone*.

The Iowa Supreme Court decided the case *de novo* based upon the voluminous record before it.[12] The facts as found by the Iowa Supreme Court were the overwhelming facts as disclosed by the evidence. Petitioners refuse to acknowledge the Iowa Supreme Court's unanimous panel's findings, and instead dwell upon the district judge's unsupported findings.[13] There is no conflict between the decision of the Iowa Supreme Court and this Court's decisions in *Lucas and Keystone*.[14]

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[12] The record on appeal to the Iowa Supreme Court consisted of an Appendix of 4409 pages and 228 exhibits.

[13] The case was initially heard and decided, unanimously, by a panel of five justices. However, Petitioners' Petition for rehearing was considered and denied by all nine Justices of the Iowa Supreme Court. (Pet. App. 18a).

[14] Discussed at pages 14-15 of Respondents' Brief in Opposition.

B. The Decision Of The Iowa Supreme Court Does Not Conflict With The Federal Circuit's *Whitney Benefits* Decision.

Petitioners cite only for this Court the Federal Circuit's decision reported at 926 F.2d 1169 (Fed. Cir. 1991). The prior decision of *Whitney Benefits, Inc. v. United States* reported at 752 F.2d 1554 (Fed. Cir. 1985) is also applicable. These cases involved the application of the Surface Mining Control and Reclamation Act (SMCRA) as it was directed to specific property in Wyoming. The principal issue was whether or not the government could, under the Fifth Amendment, require a property owner to accept other coal deposits owned by the government in lieu of money damages as just compensation. In the first *Whitney Benefits* case, the Federal Circuit held that the SMCRA effected an actual taking (physical invasion) of these coal reserves for which the government wanted to force an exchange of other coal reserves on the property owner as "just compensation." 752 F.2d at 1559. It was held that the government could not force an exchange as just compensation, especially when Congress had appropriated money for its payment. The case was returned to the Court of Claims.

In the second *Whitney* case, the Federal Circuit first held that it would not decide the facts *de novo*, but would apply the clearly erroneous rule to the Court of Claims' findings. Similarly, the fact finding of the Iowa Supreme Court cannot be disturbed.

Under the clearly erroneous rule, the Federal Circuit noted that *Whitney Benefits* was a *fact specific* case involving only that company's property. 926 F.2d at 1171. Whitney was the owner of the fee. 752 F.2d at 1555 and

926 F.2d at 1174. Wyoming's property law recognized separate mineral and surface rights. 926 F.2d at 1174. Iowa law does not recognize a separate estate in property for solid waste landfilling. The Federal Circuit noted that the Congressional debate specifically targeted this coal reserve for a taking. 926 F.2d 1173. Thereafter, under the clearly erroneous rule, the Federal Circuit approved the Claims Court's finding that Whitney had purchased the property for its coal deposits; had a pre-SMCRA investment in excess of $1,000,000 directed toward coal mining, which was thwarted; and the SMCRA had either taken this property or completely destroyed the only value it had. 926 F.2d at 1174 and 1177. *Whitney* is easily distinguishable from the facts of this case, as found by the Iowa Supreme Court. Since *Whitney* does not conflict with the case at bar, certiorari should be denied.

CONCLUSION

The facts as found by the Iowa Supreme Court establish that the zoning ordinance at issue was comprehensive in scope, uniform in its application to properties having similar qualities and location, and advances community needs ahead of private concerns. It is not facially unconstitutional, nor does it provide for a categorical taking of Petitioners' property. It did not destroy all beneficial use of the property. Petitioners, under Iowa property law, did not have investment-backed expectations of solid waste landfilling. Since no grounds to grant

the application for a writ of certiorari have been established, it should be denied.

Respectfully submitted,

LEE H. GAUDINEER
(Counsel of Record)
Special Assistant County Atty.
AUSTIN, GAUDINEER, AUSTIN SALMONS & SWANSON
900 Des Moines Building
Des Moines, Iowa 50309
Telephone: (515) 243-5750

ANNETTE J. SCIESZINSKI
Special Assistant County Atty.
SCIESZINSKI & OWENS
13 S. Clinton
Albia, IA 52531
Telephone: (515) 932-7577

Attorneys For Respondents

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ORDINANCE # 4

AN ORDINANCE establishing requirements for the operation of Landfills within the County and providing enforcement mechanisms.

SECTION #1: PURPOSE

This Ordinance implements the County's responsibility to consider groundwater protection policies in its programs as mandated by Iowa Code Section 455E.10(1); adopts regulatory policies for groundwater protection as authorized by Iowa Code Section 455E.10(2); requires all prospective operators of solid waste disposal facilities to apply for and acquire a Solid Waste Disposal Permit from the County upon a proper showing of need, public hearing within the County on environmental impact, and payment of permit fees; requires all operators to post responsible financial assurance for the lawful, conscientious and reliable operation of a disposal facility; and provides for revocation of permits and other civil penalties consistent with the home rule authority and police power of the County and Iowa Code Section 331.302(15).

SECTION#2: DEFINITIONS

A. "County" means Monroe County, Iowa.

B. "Law" means all Federal, State, and Local statutes, administrative rules, ordinances, Court rulings, and agency rulings which apply to a given situation.

C. "Operator" means a person or corporation operating a disposal facility.

D. "Disposal Facility" means a sanitary landfill where solid waste is buried between layers of earth.

E. "Groundwater" means any water defined in Iowa Code Section 455B.171, which occurs beneath the surface of the earth on a saturated geological formation of rocks or soil.

F. "Nuisance" means those activities defined in Iowa Code Sections 657.2(1), (2) and/or (4).

SECTION #3: POLICY

The protection of the health, safety, and welfare of citizens in Monroe County and the protection of the environment require the safe, sanitary, and reasonable disposal of solid wastes. An effective and efficient solid waste disposal program protects the environment and the public, and provides the most practical and beneficial use of the material and energy values of solid waste. While the continuing necessity for the existence of landfills to meet the needs of the people is apparent, alternative methods of managing solid waste for all persons are needed and methods of managing the solid waste of all persons is the responsibility of all persons and their elected representatives, including representatives of Monroe County.

Persons in Monroe County have a right to be protected from unnecessary, unsafe, and/or unreasonable disposal of solid waste which affects them and their environment, and the right to be free from nuisance created by solid waste and/or its disposal. To the end that

solid waste and its disposal is everyone's problem, persons in Monroe County have a right to address the relevant issues in a local, public forum and through their representatives and through the County's inherent police power, the right to require, implement, and enforce reasonable regulations of solid waste and its disposal.

SECTION #4: REQUIREMENTS FOR SOLID WASTE DISPOSAL FACILITY

A. It shall be unlawful for any private or public person, corporation, or agency to dump or deposit or permit the dumping or depositing of any solid waste at any place in the County other than a disposal facility holding a permit issued by the County's Board of Supervisors. (However, this Section shall not prohibit a private person or a public body from dumping or depositing solid waste resulting from its own residential, farming, manufacturing, mining, or commercial activities on land owned or leased by it, if the action does not violate any other Law. This Section specifically prohibits the dumping or depositing of solid waste at any landfill which does not hold the requisite County permit.)

B. An operator of a proposed or existing disposal facility may apply for a permit by completing all of the following:

1. A written request for a permit must be filed with the County Board of Supervisors and the application must include:

a. The names, addresses, and telephone numbers of the operator (if a corporation, the information must include the names of its officers), and all persons assisting in the preparation of the application (engineers, geologists, etc.).

b. The exact legal description of the proposed location of the disposal facility.

c. The detailed plans for transportation, transfer, loading and unloading, processing, and burial of solid waste (including plans for use of public and private rights-of-way; traffic control; dust control; disease control; and visibility control).

d. A detailed study and detailed projections regarding the impact of the facility and its operation on groundwater resources.

e. Detailed projections concerning the daily volume in tons of solid waste; daily traffic count; and duration of facility use.

f. Detailed plans for maintenance and monitoring of the facility, including monitoring through ground wells for presence of leachate.

g. Detailed plans for closure and post-closure maintenance and monitoring.

2. Appearance at a public hearing scheduled and conducted by the County to receive

input from, and address questions from, persons and agencies regarding the application for permit.

3. Posting of a $1,000,000.00 irrevocable, non-dischargeable bond for 30 years duration to assure the performance by the operator of proper operation, maintenance, monitoring, closure and postclosure maintenance and monitoring responsibilities for the period of operation and for 30 years after closure.

4. Payment to the County of a permit fee of $100.00 and additional, periodic fees as follows:

   a. The operator shall document in writing and pay $2.00 for each ton of solid waste (measured as required in Iowa Administrative Code Section 567 – 109.4 (455B)(2) in excess of 25 tons per day.

   b. Payments shall be made on a quarterly basis due ten days after the close of each calendar quarter.

   c. Permit fees unpaid when due shall draw interest and penalty at one and one-half percent per month until paid.

   d. Permit fees unpaid when due shall result in immediate revocation of the permit.

5. The County Board of Supervisors shall schedule a public hearing before a joint meeting of the Board, the County Board of

Health, and the County Conservation Board, on each permit application.

a. Notice of the hearing shall be published as required in Iowa Code Section 331.305.

b. At the hearing, the Chairman of the Board of Supervisors shall preside.

c. The applicant for the permit shall address the hearing and set forth the proposal for a Solid Waste Disposal Permit.

d. The County Board of Health shall make a presentation regarding its findings from any study conducted, investigation undertaken, or other relevant matters, concerning the proposed operation of a disposal facility.

e. The County Conservation Board shall present its findings from any study conducted, or investigation undertaken and any other relevant findings or information concerning the proposed operation of a disposal facility.

f. Input, if any shall be received from the public.

g. At the conclusion of the hearing or at a future meeting, the Board of Supervisors shall consider the application and shall make specific findings as to the need for the facility; the impact of the operation of the facility on the County's infrastructure and environment, groundwater

resources, and the public; the information submitted by the County Health Board and Conservation Board; and the general qualifications of the specific proposal presented and the specific operator nominated. The Board shall make a decision whether to grant the permit requested, deny the application, or grant the permit on specified conditions.

h. The County Board of Supervisors shall notify the applicant in writing of its decision and the basis therefor.

SECTION #5: OPERATION OF FACILITY

A. All trucks, railcars, or other transportation vehicles transporting solid waste to the facility and traveling within the County must be tarped or fully enclosed at all times, except for the specific loading and unloading of the transportation vehicle at a transfer station or at the disposal facility; and any such loading and unloading activity shall not result in the exposure of solid waste for more than a 12-hour period.

B. It shall be unlawful for any person who is not specifically vested with the responsibility of loading, unloading, or monitoring of solid waste within the County to rummage through, pilfer, salvage, or otherwise invade, tamper with, or have voluntary contact with, solid waste being transported to, being dumped or deposited in a disposal facility, or located within such facility. However, it shall not be unlawful for persons to

come in contact with solid waste when cleaning a transfer station, disposal facility, or right-of-way of litter.

C. All transfer stations within the County used for the transfer of solid waste from its source to a transportation vehicle or from a transportation vehicle to another transportation vehicle, shall be fully enclosed facilities, with concrete flooring, with drainage facilities to a sanitary sewer, and shall be hosed down with water and disinfectant at least once every 12 hours during use or after each use, whichever is less frequent.

D. Each operator of a solid waste facility in the County must at all times maintain a current listing of solid waste contributors including the names, addresses, and telephone numbers of persons under contractual agreement to deposit solid waste in the facility; persons dumping or depositing waste in the facility on a call basis; persons transporting waste to the facility both from outside of the County and from within the County; and any indirect contributors of waste amounting to more than one ton per dumped or deposited load of waste. Said information shall be available to the County upon request by its Board of Supervisors or its designee, including the County Board of Health.

E. The operator of a disposal facility shall be directly responsible for requiring compliance by all transporters and transferors or of solid waste of the provisions of this Section #5; and the

operator shall be jointly and severally responsible for any violations of this Section.

SECTION #6: HAZARDOUS WASTE

A. "Hazardous Substance" means a hazardous substance as defined in Iowa Code Section 455B.411(3).

B. "Hazardous Waste" means a waste or combination of wastes as defined in Iowa Code Section 455.411(4).

C. It shall be unlawful for any hazardous substance or hazardous waste to be transported to a disposal facility or dumped or deposited in such a facility in the County. The operator of a disposal facility and any person transporting any hazardous substance or hazardous waste as hereinabove prohibited shall be jointly and severally responsible for the violation of this provision.

D. The operator of a disposal facility shall have an affirmative duty and responsibility to monitor through its contracts and other forms of acceptance of solid waste and through routine physical checking of each load of waste for the transportation and/or dumping and depositing of hazardous substances and hazardous wastes.

E. Upon the reasonable suspicion or discovery of the transportation or dumping and depositing of hazardous substances or hazardous wastes by any person working in the transportation, dumping and depositing, or other operation of a transfer station or disposal facility, the person

acquiring the reasonable suspicion or discovery of violation of this Section #6 shall immediately notify in writing the County Board of Supervisors specifying the nature of the reasonable suspicion; the identity of other persons with knowledge of the situation; the identity of the hazardous substance or hazardous waste, if known; the exact date and location of the violation and the present location of the suspected or discovered hazardous substance or hazardous waste.

F. The County Board of Supervisors or its designee, including the County Board of Health shall have authority to immediately impound or otherwise secure and seize any transportation vehicle or other containing conveyance or facility which, through reasonable investigation, is reasonably suspected to or does contain a hazardous substance or hazardous waste.

SECTION #7: VIOLATIONS BY OPERATORS

A. A violation by a disposal facility operator of any Law including this Ordinance relating to creation, use, operation, maintenance, monitoring, closure, or post closure maintenance and monitoring of a disposal facility, including responsibilities for transfer and transportation of solid waste, shall result in immediate revocation of the permit which may be issued pursuant to Section #4 hereof.

B. In addition to any other penalty provided herein or by Law, a violation by the operator of any

provision of this Ordinance shall be a County Infraction and subject to a civil penalty not to exceed $100.00 per violation, or if the infraction is a repeat offense, a civil penalty not to exceed $200.00 for each, repeat offense.

SECTION #8: VIOLATIONS BY OTHER PERSONS

Any person, including but not limited to, persons employed in the transfer and transportation of solid waste within the County who violate any provision of this ordinance shall commit a County Infraction and shall be subject to a civil penalty not to exceed $100.00 for each violation, and if the infraction is a repeat offense, a civil penalty not to exceed $200.00 for each, repeat offense.

SECTION #9: EFFECTIVE DATE

This Ordinance becomes effective on the date published as provided in Iowa Code Section 331.302(7); however, any disposal facility which has accepted the dumping and depositing of solid waste at its location of operation prior to the date this ordinance becomes effective, is expressly exempted from the requirements established herein.

SECTION #10: ESTABLISHMENT OF LANDFILL PROTECTION FUND

The County shall use all permit fees and civil penalty fees collected under this Ordinance to create and maintain a Landfill Protection Fund, held separate from all other County funds, which shall be used by the County Board of Supervisors to provide such services, improvements, or other reasonable and necessary benefits to persons in the County as are reasonably necessary to protect

persons in the County from adverse effects of landfill operations within the County.

SECTION #11: SEVERABILITY

If any provision of this Ordinance becomes ineffective, void, or voidable by operation of statute, rule, Court order, or otherwise, all provisions and Sections shall remain in full force and effect and shall be unaffected thereby.

FIRST AMENDMENT TO ORDINANCE #4

AN AMENDMENT TO MONROE COUNTY ORDINANCE #4, SECTION #4(B)(4)(a), SECTION #2, and SECTION #10 AND ADDING A NEW SECTION #11, FOR THE PURPOSE OF ADAPTING THE SAID ORDINANCE #4 TO THE PROVISIONS OF SENATE FILE 2250, SECTION 6 OF THE ACTS OF THE 72nd GENERAL ASSEMBLY (1988), and to clarify the provisions of ordinance #4.

SECTION #1

Ordinance #4, Section #4(B)(4)(a) is hereby deleted and the following is substituted therefor:

a. The operator shall document in writing and pay a tonnage fee for each ton of solid waste deposited (measured as required in Iowa Administrative Code Section 567 – 109.4 (455B)(2) in excess of 25 tons per day, an amount equal to the following, which shall be a tonnage fee assessed and payable in addition to any tonnage fee required by a State regulative body:

1. For the year beginning July 1, 1988 through June 30, 1989: $1.50 per ton;

2. For the year beginning July 1, 1989 through June 30, 1990: $2.00 per ton;

3. For the year beginning July 1, 1990 through June 30, 1991: $2.50 per ton;

4. For the year beginning July 1, 1991 through June 30, 1992: $3.00 per ton; and

5. For the year beginning July 1, 1992 and all subsequent years: $3.50 per ton.

The tonnage fee assessed under this Section 4(B)(4) shall be held separate from all other County funds and shall be used by the County exclusively for the development and implementation of alternatives to sanitary landfills or for the costs incurred by the County to abate problems associated with the operation of the respective sanitary landfill.

SECTION #2

Ordinance #4, Section #2 (DEFINITIONS) is hereby amended to add an additional subsection G, as follows:

G. "Solid Waste" means those substances described and defined in Iowa Code Section 455B.301(5).

The purpose of this amendment is to define the term "solid waste" as used in Ordinance #4 and all amendments thereto.

SECTION #3

Ordinance #4, Section #10 is hereby amended to add the following, additional paragraph:

However, all tonnage fees assessed pursuant to Section #4(B)(4)(a) shall be used by the County exclusively for the development and implementation of alternatives to sanitary landfills or for

the costs incurred by the County to abate problems associated with the operation of the sanitary landfill.

The purpose of this amendment is to implement the provisions of House File 2250, Section 6 of the Acts of the 72nd General Assembly, 1988.

SECTION #4

Ordinance #4 is amended to add, an additional Section as Section #11 and renumber the existing Section #11 as Section #12, as follows:

(New) SECTION #11: UNPERMITTED LANDFILLS

Any disposal facility which is operating in the County without a County permit as required by this Ordinance is a nuisance and shall be abated according to law.

(renumbered) SECTION #12: SEVERABILITY

The provisions of a former Section #11: SEVERABILITY are hereby renumbered as Section #12.

Star 14 Chronology
(As of 8/31/88)

4/22/86 Drilled first holes on dirt road on Star 14

5/15/86 Optioned Charles Scott and Ollie Kaldenberg land

5/30/86 Signed coal leases w/Charles Scott and Ollie Kaldenberg

8/14/86 Optioned Melvin Bain farm to add to Star 14

8/17/86 Put in first monitoring wells on Star 14 and established Star 14 stream stations

11/86 Louis Berger & Associates conducted an Archaeological Survey of Star 14

9/10/86 Finished initial drilling on Star 14

11/8/86 Signed coal lease w/Melvin Bain

12/13/86 Started writing Star 14 coal permit

2/87 Hickok wrote PHC for Star 14

4/17/87 Submitted Star 14 coal permit

6/3/87 Asked for Board approval to mine thru the dirt Road on Star 14. Board granted the request after Star provided a letter on agreeing to do all road maintenance.

7/1/87 Discussion w/Chuck McCarty, Char. Valley R C & D suggested landfill idea – (Solid waste as well as ash)

8/15/87 Signed landfill amendments w/OK, CS, MB

8/18/87 Six-County (Monroe, Mahaske, Marion, Lucas, Jasper & Poweshiek) meeting in Knoxville – first solid waste meeting for Star

8/20/87 Article in Albia paper

8/30/87 Article in DSM Register

9/8/87 Meeting w/Bd of supervisors about Star 14 and what we are up to – with our landfill proposal

9/9/87 Road hearing by DSC for Star 14-Billy Myers, Supervisor, voiced his opposition.

9/11/87 First Reading of Ordinance #4

9/14/87 Grinnell public hearing on 6 Countys proposal – entire board of Supervisors was present-Annette led a vicious attack – 100 people present – 1 busload up from Albia

9/15/87 2nd Reading of Ordinance # 4

9/17/87 3rd Reading of Ordinance # 4

9/17/87 Sent Star 6 copies to County Supervisors

9/17/87 Landfill Ordinance # 4 adopted by the Board of Supervisors

9/24/87 Janet Jenkins Letter to the Editor – Landfill commissioner – Albia paper

10/1/87 6 County meeting in Newton – Again Bd. of Supervisors showed – voiced their anger & tried to disrupt the meeting

10/20/87 Al Heuton hired to prepare a zoning ordinance for Monroe County

10/22/87 Ray Vance Article Albia paper, asserting zoning is the only way to stop the landfill

11/2/87 Randy Luwe started writing the Star 14 SLF permit

11/12/87 Burton Kross hired to review the landfill proposal Jim Huyser met w/the Board

12/4/87 Contracted with Louis Berger & Associates to conduct Phase II Archaeological survey for Star 14

1/4/88 Star 14 hearing in Albia – Pete Hamlin and Jim Huyser speakers – man from ISU spoke on zoning

1/15/88 Board voted to request DNR hold a public hearing on Star 14. Sent letter to Lary Wilson of the DNR

1/19/88 Submitted Star 14 to DNR

1/28/88 Zoning Commission members named by the Board of Supervisors

2/18/88 DSC Asst. Director Ken Tow had meeting with the Board of Supervisors over their request for all Star violation notices.

2/19/88 8:30 am-Board rescinded previous approval to mine thru the dirt road on Star 14. First approved 6/3/87

2/25/88 Burton Kross visited Star for 30 minutes at the office

3/2/88 County Zoning Commission voted landfills into I-2 status from A-2

3/21/88	Bd of Supervisors letter to DNR & DSC (Burton Kross Report)
3/25/88	Janet Jenkins Editorial
4/4/88	Zoning Meeting – Bd. of Supervisors appeared
4/7/88	Zoning commission meeting – Legion Hall-Albia, 9 AM presented proposal
4/11/88	2nd letter by Board to DSC, condemning the project
4/12/88	Greg Morehead, Chairman, Zoning Commission resigned from Commission
4/14/88	Zoning Comm. Meeting – Albia- 10AM City Hall Presented first proposal at 9am to Board of Supervisors
4/21/88	Zoning Commission meeting to adopt final report to the Board-Star presented proposal requesting re-zoning of all Star permits, leases, washplant, etc. Commission didn't act on it,
4/25/88	Second proposal to the Bd. of Supervisors
4/28/88	3rd letter by Board to DSC, condemning the project
4/28/88	Albia paper editorial
4/29/88	1st reading of the Zoning Ordinance by the Board
5/2/88	2nd Reading of the zoning ordinance by the Board
5/6/88	In court w/Monroe County & DNR-Injunction hearing

5/6/88 Received Star 14 Coal Permit – Dan & Randy put up Star 14 signs

5/7/88 Tom DeLong, subcontractor, started clearing in the coal operation

5/9/88 9am-Public hearing of the Zoning Ordinance, Jim made announcement of shutdown

1pm-3rd & final reading of the zoning ordinance

7pm-DNR meeting, Legion Hall, Albia, Pete Hamlin, Ruth Bender, Morris Preston there

5/10/88 Zoning Ordinance went into effect – Jim Huyser & Randy went to DNR to ask for permit from Larry Wilson & Al Stokes – struck out

5/13/88 Star 14 SLF permit approved by DNR

5/13/88 First layoffs by Star-Affected over 20 employees

5/25/88 An informal conference on the Star 14 Revision was held by the DSC at the request of the Board. The Board voiced their opposition to Star 14 thru Janet Jenkins and the Burton Kross report.

5/26/88 Meeting and proposal to the County

6/9/88 Meeting w/Bd of Supervisors-presented 3rd proposal

6/20/88 Laid off remaining mining crew-reclamation crew left

6/21/88 Talked to the Zoning Administrator about information requirements – brought up transportation study

6/22/88 Letter form Zoning Administrator
Received Star 14 coal revision letter from DSC

6/29/88 Star 14 Coal revision letter from DSC

6/29/88 The Board passed a revision to Landfill ordinance #4

7/8/88 Met w/ the Bd & updated them on our project

7/8/88 Laid off remaining employees except for a staff of 7

7/13/88 Tried to drop off the re-zoning permit but office was closed until 7/1/88 [sic] for Administrator's vacation

7/18/88 9:03am Margaret Stewart (zoning administrator) called to schedule a time for Randy Luwe to submit the re-zoning application-scheduled Randy for 7/22/88 at 8am

7/22/88 Submitted the Star 14 re-zoning application to Margaret Stewart-2:28.09 minutes to review submitted – walked downstairs, made out a receipt and made a copy – finished w/Margaret in 7:31.47 minutes

7/30/88 Jim Huyser met w/ the Governor over the situation at Star 14

8/9/88 First meeting by Zoning Commission discussing Star 14 app. – scheduled a site visit on

8/25/88 & approved rules of conduct for the Zoning Commission

8/10/88 RSL letter to Zoning Commission requesting info presented at the meeting of 8/9/88.

8/11/88 Letter from Zoning Commissioner charging me for copies and scheduling a meeting for me to come in & pick them up on 8/15. RSL didn't attend the scheduled meeting.

8/18/88 Letter from Zoning Commissioner, providing some of the requested information free of charge

8/25/88 Site visit w/Zoning Commission on Star 14 at 8a.m. – Met for 1 1/2 hours.

AMENDMENT TO LEASE

7/28/87 RSL

Mr. and Mrs. Charles Scott
R.R. #5
Albia, Iowa

and

James Huyser

1) Lessor grants Lessee the right under this lease to dispose of non-hazardous waste on the leased premises.

2) Disposal of waste will be conducted by the Lessee in accordance with permits applied for and received from the Department of Agriculture and the Department of Natural Resources.

3) A royalty of $.20 per ton will be paid by the Lessor to the Lessee on the 25th of each month for the preceding month, for each ton of material disposed of under the permit from the Department of Natural Resources. The minimum royalty will amount to $500.00 per month.

4) Records of disposed tonnage will be kept and will be available to the Lessor at any reasonable for inspection.

5) All insurance required under the original lease will remain in force and effect until all activity ceases on the leased premises.

6) Disposal on the leased premises will cease 9 months after all the economically mined coal has been removed.

8) Effective date, August 15, 1987.

/s/ Rose Mary Scott

/s/ Charles Scott
Lessor

/s/ James Huyser
Lessee

STATE OF IOWA, COUNTY OF MONROE.

ON THIS 28th day of July, 1987, before me personally appeared Mr. & Mrs. Charles Scott, James Huyser to be known to be the person(s) described in and who executed the same as his (their) free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires:

_____ /s/ Randall S. Luwe
Notary Public within and for the County and State

(Seal)
RANDALL S. LUWE
MY COMMISSION EXPIRES
2/15/90

App. 24

AMENDMENT TO LEASE

7/28/87 RL

Mr. and Mrs. Oliver Kaldenberg
R.R. #5
Albia, Iowa

and

James Huyser

1) Lessor grants Lessee the right under this lease to dispose of non-hazardous waste on the leased premises.

2) Disposal of waste will be conducted by the Lessee in accordance with permits applied for and received from the Department of Agriculture and the Department of Natural Resources.

3) A royalty of $.20 per ton will be paid by the Lessor to the Lessee on the 25th of each month for the preceding month, for each ton of material disposed of under the permit from the Department of Natural Resources. The minimum royalty will amount to $500.00 per month.

4) Records of disposed tonnage will be kept and will be available to the Lessor at any reasonable for inspection.

5) All insurance required under the original lease will remain in force and effect until all activity ceases on the leased premises.

6) Disposal on the leased premises will cease 9 months after all the economically mined coal has been removed.

8) Effective date, August 15, 1987.

/s/ Oliver Kaldenberg

/s/ Dorothy Kaldenberg
Lessor

/s/ James Huyser
Lessee

STATE OF IOWA, COUNTY OF MONROE.

ON THIS 28th day of July, 1987, before me personally appeared Mr. & Mrs. Oliver Kaldenberg, James Huyser to be known to be the person(s) described in and who executed the same as his (their) free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires:

_____

/s/ Randall S. Luwe
Notary Public within and for the County and State

(Seal)
RANDALL S. LUWE
MY COMMISSION EXPIRES
2/15/90

AMENDMENT TO LEASE

Mr. Melvin Bain
R.R. #5
Albia, Iowa

and

James Huyser

1) Lessor grants Lessee the right under this lease to dispose of non-hazardous waste on the leased premises.

2) Disposal of waste will be conducted by the Lessee in accordance with permits applied for and received from the Department of Agriculture and the Department of Natural Resources.

3) A royalty of $.20 per ton will be paid by the Lessor to the Lessee on the 25th of each month for the preceding month, for each ton of material disposed of under the permit from the Department of Natural Resources. The minimum royalty will amount to $500.00 per month.

4) Records of disposed tonnage will be kept and will be available to the Lessor at any reasonable for inspection.

5) All insurance required under the original lease will remain in force and effect until all activity ceases on the leased premises.

6) Disposal on the leased premises will cease 9 months after all the economically mined coal has been removed.

7) The Lessee has a purchase option on the leased property for double the current market price. Current market price is defined as the marketable price for the land on the date this option is exercised.

8) Effective date, August 15, 1987.

/s/ James Huyser
Lessor

/s/ Melvin T Bain
Lessee

STATE OF IOWA, COUNTY OF MONROE.

ON THIS 21th day of July, 1987, before me personally appeared Melvin Bain, James Huyser to be known to be the person(s) described in and who executed the same as his (their) free act and deed.

iN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires:

_____ /s/ Randall S. Luwe
Notary Public within and for the County and State

(Seal)
RANDALL S. LUWE
MY COMMISSION EXPIRES
2/15/90

IOWA DEPARTMENT OF NATURAL RESOURCES
SANITARY DISPOSAL PROJECT PERMIT

I. Permit Number: 68-SDP-5-88P

II. Permitted Agency: Star Coal

III. Project Location: W 1/2 of the NW 1/4 SECTION 23; S 1/2 of the NE 1/4 and S 1/2 of the NE 1/4 SECTION 22; W 1/2 of the SE 1/4 and E 1/2 of the SW 1/4 SECTION 22; all in T73N-R17W Monroe County

IV. Responsible Official: James Huyser, President

Name: Star Coal Company
Address: RR #1, P.O. Box 127
Lovilia, IA 50150
Phone: 515/946-7221

V. Registered Design Engineer: Rodney J. Vlieger
Name: Eugene A. Hickok, Associates
Address: 10550 New York Avenue – Suite C
Des Moines, IA 50322
Phone: 515/253-0830

VI. Date Issued: May 13, 1988

VII. Expiration Date: May 13, 1991

VIII. Issued by: /s/ Illegible
Environmental Protection Division
for the Director

IX. General Provisions

The above named permitted agency is hereby authorized to operate a sanitary landfill at the

described location in conformance with Chapter 455B of the Code, the rules pursuant thereto existing the time of issuance, and any subsequent new rules which may be dully [sic] adopted and any provisions contained in Section X of this permit.

The project shall be operated according to the engineering plans and specifications approved by the Department of Natural Resources and these shall become a part of this permit. Any modifications or deviations from the engineering plans and specifications must have prior approval by the Department and an amendment to this permit issued.

The issuance of this permit in no way relieves the applicant of the responsibility for complying with all other local, state, and federal statutes, ordinances, and rules or other requirements applicable to the establishment and operation of this landfill.

No legal or financial responsibility arising from the construction or operation of the approved project shall attach to the state of Iowa or the Department of Natural Resources due to this issuance of this permit.

If title to this project is transferred, the new owner must apply to the Department for a transfer or this permit within thirty days of the date of title transfer. This permit is void sixty days after the date of title transfer unless the Department has transferred the permit.

Note: Failure to comply with Chapter 455B of the Code, or any rule or order promulgated pursuant thereto, or any or all provisions of this permit may result in 1) a monetary civil penalty for each day of violation, pursuant to section 455B.307 of the Code, or 2)

the suspension or revocation of this permit, pursuant to Section 455B.304 of the Code.

X. Special Provisions:

1. Waste disposal at this site shall be limited to municipal solid waste and coal combustion residue. The source of these wastes shall be as identified in the comprehensive plan and includes the counties of Jasper, Mahaska, Marion, Poweshiek, Lucas, and Monroe. Additionally, the adjacent potential area referenced by Larry E. Crane in his April 29, 1988 letter to Allan E. Stokes, which includes Des Moines Metro Solid Waste Agency (Polk), Warren, Madison, Union, Clarke, Wayne, Ringgold, Decatur, Marshall, Wapello, Appanoose, Iowa, Tama, and Grundy counties, shall be considered to be the balance of the 20 county service area referenced on page 4 of the permit application. Any contractual agreement for disposal of solid waste, other than coal combustion residue, for areas outside of the geographic area defined herein shall be considered to be outside of the scope of the approved plan and subject to the approval of a revised comprehensive plan and subsequent permit amendment.

2. Following the removal of the coal seam and prior to placement of solid waste, the responsible official's engineer shall inspect and certify that base preparation, including the leachate collection system, conforms to the plans approved as a part of this permit application.

   This department must be notified a week in advance of the engineer's inspection so that

the department may also conduct an inspection.

3. This facility shall be operated in accordance with the construction plans and permit application documents, to include the comprehensive solid waste plan and appendices, all of which are herewith incorporated into the permit by reference.

4. A planning board consisting of representative of each entity that contracts with Star Coal Co., for the disposal of solid waste, appointed to implement the waste management alternative in the Comprehensive Solid Waste Plan, shall be assembled between July, 1988 and September, 1988.

5. Revised Comprehensive Plans shall be initiated for all areas under contract with Star Coal Co., by August 1, 1988, and shall be completed and submitted to the department by January 1, 1989. Continued comprehensive planning will be completed each July 1 and January 1 for new service areas added under contract.

6. No open burning shall be authorized at this site.

7. In-situ testing of the clay liners along the sidewalls of the site will be completed as the liner is constructed. An independent consultant shall conduct in-situ permeability tests to verify that the degree of compaction achieved within the liner is greater than 95% of the proctor density. Verification shall be by testing in each five foot vertical interval and 500 foot horizontal interval around the entire perimeter of the site.

8. Solid wastes disposed at this site shall not exhibit free liquids, toxic, or hazardous properties. No hazardous wastes as defined by Chapter 455B.411 of the Iowa Code may be disposed at this landfill. Any wastes other than municipal solid waste which may potentially exhibit such characteristics shall be accepted for disposal only under the provisions of a special waste authorization issued by the department. Special waste authorization must be obtained in advance of acceptance of the waste. Semiannual reports summarizing the disposals for the reporting period shall be submitted for all specially authorized wastes received. The reporting periods shall be January 1 through June 30 and July 1 through December 31 with reports due July 31 and January 31 each year. The reports shall include identification of the wastes and volumes authorized, the waste generator, the period of disposal and copies of the disposal records. If an authorized waste is not received, a statement to that effect shall be included in the semiannual special wastes reports. Copies of this report shall be sent to the Field and Main Offices of the department.

9. All groundwater monitoring wells shown on the approved plans shall be installed in the initial construction phase for the entire site prior to disposal of solid waste. After the wells are developed, water samples shall be collected and analyzed for the parameters and the frequencies indicated hereafter:

Quarterly: (first year only)

Arsenic, dissolved
Benzene

Barium, dissolved
Carbon Tetrachloride
Cadmium, dissolved
1,2-Dichloroethane
Chromium, total dissolved
Trichloroethylene
Lead, dissolved
1,1,1-Trichloroethane
Mercury, dissolved
1,1-Dichloroethylene
Magnesium, dissolved
Paradichlorobenzene
Zinc, dissolved
Copper

Quarterly: (first year and continuing)

Chloride
Specific Conductance (field measurement)
pH (field measurement)
Ammonia nitrogen
Iron, dissolved
Chemical Oxygen Demand
Temperature (field measurement)
Annual: (first year and continuing)

Total Organic Halogens
Phenols
One hundred twenty (120) days following the effective date of the proposed ground water monitoring rules, the responsible officials shall have the existing monitoring well system analyzed to determine the adequacy of the system in accordance with the new rules. In particular, a hydrologic monitoring system plan shall be submitted to the Department

detailing the sampling protocol to be followed, and other details as may be required by the rule as adopted.

10. Within 180 days after the effective date of administrative rules intended to implement Chapter 455B (Iowa code) as amended by HF631, Acts of the 1987 Iowa General Assembly, the responsible official(s) shall submit the following documents to the department for review:

    a. A closure/postclosure plan as outlined in Section 455B.306 (Iowa Code) as amended by HF 631, Section 413.4.a.

    b. A leachate control plan as outlined in Section 455B.305 as amended by HF 631, Section 413.4.b. The plan must address the adequacy of the system as proposed relative to such subsequent rules, especially in regard to treatment and disposal options.

    c. A copy of the financial assurance instruments put in place by the owner/operator to assure that the operation will continue to be viable during the active life of the facility as well as the thirty-year postclosure period.

11. The responsible officials shall provide the department a copy of a lease or access document, recorded at the county recorder's office which guarantees access to the site for thirty years after closure of the site for the purposes of site surface maintenance and ground water monitoring. The document shall specifically indicate that access to the site for thirty years after closure is permitted for these purposes.

A signed and legally binding lease must be submitted to the department prior to the commencement of the deposition of any solid waste.

12. The site and operation of this facility shall be inspected semiannually by a professional engineer registered in the State of Iowa. A brief report by the engineer indicating areas of conformance and/or nonconformance with the approved plans and specifications shall be submitted to both the Field and Main offices of this department by May 1 and November 1 of each year.

13. This sanitary landfill is authorized to accept asbestos waste. This Special Provision should not be interpreted as requiring the landfill to accept asbestos wastes.

    The following conditions and requirements shall be met by the sanitary landfill operator and/or the certified asbestos contractor whenever asbestos waste is disposed in this sanitary landfill:

    a. Prior to delivery, the asbestos and any asbestos contaminated wastes shall be wetted and placed into a container system which will prevent it from becoming airborne. The exception is cardboard boxes which have contained asbestos parts.

    b. If the asbestos wastes become dry prior to disposal, rewettting will be necessary to prevent dust evolution. (Asbestos is carcinogenic if inhaled.) This must be done prior to acceptance at the landfill. When exposed, the wet asbestos must be properly covered before it can dry again.

c. Respirators and goggles shall be used in all instances of asbestos handling operations when dust evolution is unavoidable or when wetting operations are not effective in controlling dust evolution.

d. The hauler shall identify the waste to the landfill operator upon arrival at the sanitary landfill.

e. Containers of asbestos shall be deposited at a working face separate from the regular working face, covered and compacted taking extreme care not to rupture asbestos containers.

f. Strict adherence to EPA regulations is mandatory. Questions on EPA regulations should be addressed to Ms. Jan Lambert at 319/236-2896. Questions regarding asbestos abatement certification should be addressed to Walter Johnson, Iowa Division of Labor, 515/281-3606.

14. All solid wastes shall be covered with compacted clay overburden soils at the end of the working day to a minimum depth of six inches. Intermediate cover shall be placed at the end of each week's operation for a total depth of cover of 12 inches. All surfaces upon which solid waste has not been placed for a period of two months shall be covered with an additional foot of clay to provide a final cover of depth of two feet above the solid waste.

15. This facility shall be staked as necessary and inspected on a semiannual basis by a professional engineer registered in the State of Iowa. The engineer shall prepare a brief report

describing the site's conformance and nonconformance with the permit and approved plans and specifications during the inspections. These reports shall be submitted by May 1 and November 1 each year, and shall be submitted to both the Field and Main offices of the department. The department shall be notified if any inspection reveals any nonconformance with the permit and approved plans and specifications.

16. The owner of this landfill shall restore the completed landfill area surface to the approximate original contour consistent with provisions in the mining permit and our rules.

17. This permit may not be transferred, or assigned without the written approval of the department.

18. The issuance of this permit does not convey any property rights of any kind, or any exclusive privilege.

19. The issuance of this permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.